

DOLORES A. CABELLO AND TEOFILO ABELLANOSA, PETITIONERS, VS. THE REPUBLIC OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 142810. August 18, 2005

Ponente: TINGA, J.

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TINGA, J.:

This Petition[1] dated April 12, 2000 assails the Decision[2] dated November 17, 1999 and Resolution[3] dated April 5, 2000 of the Court of Appeals, respectively reversing the trial court's Decision[4] ordering the reconstitution of a certificate of title and denying petitioners' motion for reconsideration.

The facts are straightforward.

In a Petition[5] dated January 20, 1996, Dolores A. Cabello and Teofilo Abellanosa sought the reconstitution of an unknown Original Certificate of Title covering Lot No. 4504 of the Cadastral Survey of Cebu pursuant to Decree of Registration No. 335316. Petitioners alleged therein that an original certificate of title over the property was issued by the Registry of Deeds of Cebu City in the names of Basilio and Roberto Abellanosa. However, the original certificate of title on file with the Registry of Deeds and the owner's duplicate certificate of title in the possession of the registered owners were lost during World War II. Further, the petition was allegedly filed pursuant to Sec. 2(d) in relation to Sec. 12 of Republic Act No. 26 (RA 26), which dispenses with the requirement of submission of the tracing cloth/blue print plan and technical description.

Attached to the petition are a certified photocopy of Decree of Registration No. 335316 issued by the Land Registration Commission; a certification issued by the Registry of Deeds of Cebu City to the effect that its records do not show that a certificate of title has been issued over Lot No. 4504; and Tax Declaration No. 20335 in the name of co-owner Basilio Abellanosa.

After due proceedings, the trial court rendered a Decision[6] dated August 28, 1996, ordering the Registry of Deeds of Cebu City to reconstitute the original certificate of title for Lot No. 4504 in the names of Basilio Abellanosa, married to Severina Bacalso, and Roberto Abellanosa, married to Apolonia Nacua, based on Decree of Registration No. 335316.

The Republic, represented by the Office of the Solicitor General (OSG), appealed the Decision, contending that the certification issued by the Registry of Deeds of Cebu City puts in doubt whether an original certificate of title covering Lot No. 4504 was previously issued in the names of petitioners' predecessors-in-interest. Assuming that a certificate of title was so issued, the petition should have been accompanied by a plan and technical description of the property duly approved by the Chief of the General Land Registration Office or a certified copy of the description taken from a prior certificate of title covering the property since it was based on Sec. 2(f) or 3(f) of RA 26.[7]

The appellate court reversed the trial court's findings, ruling that the documents presented by petitioners in support of their petition for reconstitution fall under Sec. 2(f) of RA 26 since the decree of registration does not

establish by any reasonable measure the existence of an earlier certificate of title over the property concerned. Hence, petitioners should have produced a duly approved plan and technical description as mandated under Sec. 12 of RA 26.

The Court of Appeals denied petitioners' motion for reconsideration.

Petitioners are now before this Court averring that the petition for reconstitution was based on Sec. 2(d) of RA 26. Under this section of the law, an authenticated copy of the decree of registration or patent pursuant to which the original certificate of title was issued is sufficient to support a petition for reconstitution. The plan and technical description are therefore no longer required.

The appellate court also allegedly erred in finding that the decree of registration petitioners presented does not establish the existence of an earlier certificate of title.

The OSG filed its Comment[8] dated August 22, 2000, arguing that RA 26 presupposes that a title was previously issued by the Registry of Deeds in the name of the applicant which was subsequently lost or destroyed. In this case, the certification issued by the Registry of Deeds shows that said office did not issue a certificate of title covering Lot No. 4504. Even assuming that such a certificate of title was issued, the OSG avers that petitioners should have presented an authenticated copy of the decree of registration and not a mere certified photocopy. Moreover, they should have accompanied the petition with a plan and technical description of the property duly approved by the Land Registration Authority or with a certified true copy of the description taken from a prior certificate of title covering the same property pursuant to Sec. 12 of RA 26.

In their Reply[9] dated October 9, 2003, petitioners maintain that the certification issued by the Registry of Deeds was so worded because both the original and the duplicate certificate of title were lost and/or destroyed during World War II. Moreover, the decree of registration they presented is according to them an authenticated copy admissible under the Rules of Court. They also aver that RA 26 does not require the presentation of the plan and technical description of the property if the basis for the petition for reconstitution is, as in this case, Sec. 2(d) thereof.

We deny the petition.

Republic Act No. 26, entitled "An Act Providing a Special Procedure for the Reconstitution of Torrens Certificates of Title Lost or Destroyed", approved on September 25, 1946, lays down the procedure by which previously issued but lost or destroyed certificates of title may be reconstituted. As the title of the law suggests, it presupposes that the property whose title is sought to be reconstituted has already been brought under the provisions of the Torrens System, Act 496.[10]

Republic Act No. 26 confers jurisdiction or authority on the Court of First Instance (now the Regional Trial Court) to hear and decide petitions for judicial reconstitution. It provides the special requirements and procedure that must be followed before the court can properly act, assume and acquire jurisdiction or authority over the petition and grant the reconstitution prayed for. The petition for reconstitution must allege certain specific jurisdictional facts, the notice of hearing must be published in the Official Gazette and posted in particular places and the same sent or notified to specified persons.[11] Sections 12 and 13 of RA 26 set forth the contents of the petition and lay down the procedure to be followed therefor, as follows:

SECTION 12. Petitions for reconstitution from sources enumerated in sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e) and/or 3(f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that

no co-owner's, mortgagee's, or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location, area and boundaries of the property; (d) the nature and description of the buildings or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and all persons who may have any interest in the property; (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the property have been presented for registration, or, if there be any, the registration thereof has not been accomplished, as yet. All the documents, or authenticated copies thereof, to be introduced in evidence in support of the petition for reconstitution shall be attached thereto and filed with the same: Provided, That in case the reconstitution is to be made exclusively from sources enumerated in section 2(f) of 3(f) of this Act, the petition shall be further accompanied with a plan and technical description of the property duly approved by the Chief of the General Land Registration Office, or with a certified copy of the description taken from a prior certificate of title covering the same property. [Emphasis supplied.]

SECTION 13. The court shall cause a notice of the petition, filed under the preceding section, 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 is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.

The documentary requirements and procedure are mandatory and must be strictly complied with before the court can act on a petition for reconstitution and grant the remedy sought. Otherwise, the proceedings will be utterly void.[12]

In this case, there appears to be no question as regards compliance with the procedural requirements of RA 26. Rather, the controversy lies in the documentary basis for the reconstitution.

According to petitioners, the petition lodged before the trial court is anchored on Sec. 2(d) of RA 26, which provides that an original certificate of title may be reconstituted from an authenticated copy of the decree of registration pursuant to which an original certificate of title was issued. On the other hand, the OSG considered the petition to have been filed under Sec. 2(f) of the law.

Sec. 2 is quoted hereunder in full for comparative reference:

SECTION 2. Original 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 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 or 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. [Emphasis supplied.]

As can be seen from the foregoing text in relation to Sec. 12 of RA 26, in case the reconstitution is to be made exclusively from sources enumerated in Sec. 2(f), the petition shall be further accompanied by a plan and technical description of the property duly approved by the Chief of the General Land Registration Office, or with a certified copy of the description taken from a prior certificate of title covering the same property. This requirement does not exist if the source of the reconstitution is Sec. 2(d), although as worded, it must be shown that an original certificate of title was indeed issued pursuant to the very decree of registration presented as basis for reconstitution.

In this case, petitioners attached to their petition for reconstitution a certified photocopy of the decree of registration pursuant to which an original certificate of title was allegedly issued by the Registry of Deeds covering the property. They also presented a witness who testified that he had actually seen a copy of the property's original certificate of title.[13]

The trial court, after evaluating the documentary and testimonial evidence, was convinced that the property is covered by an original certificate of title, the original and owner's copies of which were lost, and accordingly ordered the reconstitution of the original certificate of title.

The propriety of the reconstitution ordered by the trial court in light of the certification issued by the Registry of Deeds "[T]hat records in this office do not show that a certificate of title has been issued to Lot No./s 4504...", is now at issue. The OSG insists that the petition for reconstitution should have been considered by the trial court as filed under Sec. 2(f) of RA 26, in accordance with which the plan and technical description of the property should have also been presented, because the question of whether an original certificate of title was issued pursuant to the decree of registration was put in doubt by the certification issued by the Registry of Deeds.

We cannot give primacy to the findings of the trial court over the categorical certification by the Registry of Deeds that its records do not show that a certificate of title was issued over the property. Indeed, this certification presents a powerfully cogent reason for the denial of the petition for reconstitution anchored as it was on Sec. 2(d) above-quoted. The trial court should have been more circumspect in ordering reconstitution based on this section considering that the only evidence upon which it based its finding that an original certificate of title had been issued pursuant to the decree of registration adduced by petitioners was the testimony of two witnesses, one of whom is petitioner herein.[14]

Notably, only Felipe Abangan was able to positively testify that he had seen the original certificate of title of the property. Petitioner Dolores Cabello merely testified to the effect that Basilio Abellanosa kept the original certificate of title but that she did not know where it was.[15]

In sum, the evidence presented by petitioners does not establish that an original certificate of title over the property was earlier issued. Hence, the reconstitution ordered by the trial court was improper. The petition should have been filed under Sec. 2(f) of RA 26, in which case, it should have been accompanied by a duly approved plan and technical description of the property in accordance with Sec. 12 of the law.

WHEREFORE, the Petition is hereby DENIED. The Decision of the Court of Appeals is AFFIRMED. Costs against petitioners.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 4-13

[2] CA Records, pp. 50-57.

[3] Id. at 70-71.

[4] RTC Records, pp. 46-47, Regional Trial Court, 7th Judicial Region, Branch 16, Cebu City.

[5] Id. at 1-3.

[6] Id. at 46-47.

[7] CA Records, pp. 10-25.

[8] Rollo, pp. 148-154.

[9] Id. at 158-162.

[10] *Dordas v. Court of Appeals*, 337 Phil. 59 (1997).

[11] *Tahanan Development Corporation v. Court of Appeals*, 203 Phil. 652 (1982).

[12] *Ibid.*

[13] RTC Records, p. 81, decision.

[14] TSN, July 30, 1996, pp. 1-3, Testimony of Felipe S. Abangan; pp. 3-6, Testimony of Dolores Cabello.

[15] *Ibid.*

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