

IN RE: RECONSTITUTION OF THE ORIGINAL COPY AS WELL AS THE OWNER'S DUPLICATE COPY OF TCT NO. T-38769, REPUBLIC OF THE PHILIPPINES, PETITIONERS, VS. SPOUSES LORENZO AND FELICIANA

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G.R. No. 148025. August 13, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On April 30, 1997, spouses Lorenzo and Feliciano Mateo filed before the Regional Trial Court of Balanga, Bataan a petition for “RECONSTITUTION OF THE ORIGINAL COPY AS WELL AS THE OWNER’S DUPLICATE COPY OF TRANSFER CERTIFICATE OF TITLE NO. T-38769” issued on July 16, 1971 by the Registry of Deeds of Bataan in the name of one Jose Tan.

From the Mateos’ petition for reconstitution, it is gathered that Transfer Certificate of Title (TCT) No. T-38769 covers two parcels of land forming part of Lot No. 979 of Bagac, Bataan Cadastre situated in barrio Cabog-Cabog, Bagac, Bataan, more particularly described as follows:

2.a. A parcel of land Lot No. 1186 (before Lot No. 3 Sgs-3094 being a portion of Lot No. 979) of the Cadastral Survey of Bagac, Cad. Case No. 18, L.R.C. Cad. Rec. No. 1095), situated in the Barrio of Cabog-Cabog, Mun. of Bagac, Province of Bataan. Bounded on the NE., points 2 to 4 by Lot 321, Pilar Cadastre; on the SW., points 4 to 5 by Lot No. 1189; on the S., points 5 to 7 Lot 1187; and on the W., points 7 to 8 and 8-1 by Lot 1185; and points 1-2 by Lot No. 1184. Containing an area of TWO HUNDRED EIGHT THOUSAND NINE HUNDRED FIFTY SIX (208,956) square meters, more or less.

2.b. A parcel of land Lot No. 1187 (before Lot No. Sgs-3094 being a portion of Lot No. 979) of the Cadastral Survey of Bagac, Cad. Case No. 18 L.R.C. Cad. Rec. No. 1095), situated in the Barrio of Cabog-Cabog, Mun. of Bagac, Prov. of Bataan. Bounded on the NE, points 10-1 by lot No. 1189; on the SE., points 1-4 by Lot No. 1188; on the SW, points 4-5 by Lot No. 7, Sgs-2700; on the W., points 5-6 by Lot No. 6 Sgs-2701; and on the NW., points 6-8 by Lot No. 1185 – and points 8-10 by Lot No. 1186. x x x containing an area of TWO HUNDRED THIRTY NINE THOUSAND THREE HUNDRED EIGHTY FIVE (239,385) square meters, more or less.[1]; (Underscoring supplied)

that they acquired from Jose Tan the above-described parcels of land by purchase on September 3, 1978 by Deed of Sale dated September 3, 1978; that the original copy of TCT No. T-38769 on file at the Registry of Deeds of Bataan is missing and could not be located despite efforts to do so, hence, deemed lost; that while Lorenzo Mateo was in possession of the owner’s duplicate copy of the title, “due to his frequent reassignment as a former military officer to different places from 1978 up to his retirement on September 3, 1990, he misplaced said title among his files, although he has a xerox copy [thereof]”; and that despite efforts to locate the owner’s duplicate copy of the title, the same proved futile and is now deemed lost.

At the witness stand, Lorenzo Mateo testified to the fact of loss of the owner’s duplicate copy of the title as

follows:

[ATTY. SEVILLEJA:]

Q:

Who has been keeping that owner's copy of the title since the execution of that deed of sale on September 3, 1978?

A:

I used to keep it but since at that time I was still in the military active service, I usually bring along the document with me up to Leyte, Tacloban, but unfortunately one strong typhoon hit the area and the quarter I used to live at that time as a regional commander of Region 8, was totally blown out by a very strong typhoon and during the evacuation of the things including a cabinet, it was later found out to be missing and after all my efforts to locate the same, I can't locate the same, although I have a xerox copy of the said title filed in my office.[2] (Underscoring supplied);

And he presented documentary evidence consisting of, among others, carbon copy of a September 3, 1978 Deed of Absolute Sale purportedly executed by Jose Tan in favor of the Mateos (Exh. "H")[3] for and in consideration of P50,000.00 pesos, which document bears a rubber stamp impression of the Bureau of Internal Revenue, Balanga, Bataan reading "RECEIVED APL 16, 1997" and which appears to have been notarized by Felipe V. Abenojar, Notary Public "Until Dec. 31, 1978";[4] photocopy of TCT No. T-38769 issued to Jose Tan on March 14, 1972 (Exh. "I")[5]; June 30, 1995 letter of "B/Gen. LORENZO M. MATEO (Ret.)" (Exh. "L") [6] addressed to the Register of Deeds, Balanga, Bataan, informing the latter that the owner's duplicate copy of TCT No. T-38769 was missing and deemed lost following futile efforts to locate it and requesting him not to entertain any transaction covering the lands covered by the title; certified photocopy of a decision of March 17, 1969 (Exh. "M") [7] rendered by then Judge Tito V. Tizon of the then Court of First Instance (CFI) of Bataan at Balanga in CADASTRAL CASE NO. 18, LRC CAD REC. NO. 1095 LOT NO. 979 (PORTION) BAGAC CADASTRE, Sgs-3094, Sgs-3119, Sgs-3120, Sgs-3121, "PETITION TO REOPEN CADASTRAL PROCEEDING UNDER REP. ACT 931 AS AMENDED BY REP. ACT 2061 AND TO SEGREGATE AND ADJUDICATE TO PETITIONERS A PORTION OF LOT 979 OF BAGAC CADASTRE, CECILIA BRIONES, et al., Petitioners," which decision awarded several lots forming part of Lot No. 979 of Bagac, Bataan Cadastre to six persons including Donato Echivarria, alleged to be the person from whom Jose Tan purchased the lands, title to which is subject of the present case for reconstitution; photocopy of a June 5, 1969 Order issued by Judge Tito V. Tizon [8] in Cadastral Case No. 18 for the Issuance of Decrees in Cadastral Cases (Exh. "N"); March 11, 1971 letter [9] of Acting Clerk of Court of the CFI of Bataan Antonio C. Quintos to Mr. Vicente A. Querol, Assistant Chief, Docket Section, Land Registration Commission, Manila reading:

In reply to your letter dated March 9, 1971 requesting this Office for one more certified copy of the decision rendered by this Court in the petitions for cadastral reopenings of Jesus Gutierrez et al., Engracia Salaya et al., and Cecilia Briones et al., please be advised that the undersigned could not possibly furnish you with the same in view of the fact that the original records of said petitions are presently with the Department of Justice being used in connection with the investigation of the administrative charge against Honorable Judge Tito V. Tizon of this Court.

Said petitions were taken by Senior Prosecutor Vidal M. Tombo on July 16, 1969 as per receipt of this office. [10] (Underscoring supplied);

photocopy of a RECEIPT (Exh. "T") [11] purporting to show that one, whose signature is illegible but who is alluded to as NBI agent Ramon Befetel, [12] received on March 8, 1973 for VIDAL M. TOMBO, Special

Assistant, Department of Justice, from the Register of Deeds of Balanga, Bataan the therein listed 93 documents including “TCT No. T-386769 – Jose Tan”; 1997 Declaration of Real Property in the name of JOSE TAN of 41-D Tangile St., Quezon City (Exh. “U”)[13]; and 1997 Declaration of Real Property in the name of JOSE TAN. (Exh. “U-1”)[14]

Aside from Lorenzo Mateo, Jose Y. de la Cruz, vaultkeeper since 1972 of the Bataan Registry of Deeds, took the witness stand, the latter declaring that the original of the TCT was taken by “a Fiscal Tombo.” Also testifying was Mona Liza Esguerra, Chief of the Records Division of the Department of Justice since 1980, who declared that “Atty. Tombo” did not surrender the title to the Records Section and she did not know whether he is still alive.

Branch 2 of the RTC Balanga, holding as follows:

Since this is a petition for the reconstitution of a transfer certificate of title the applicable provision is Sec. 3 of Republic No. 26, as amended by Rep. Act No. 6732.

That section provides that:

SEC. 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) That 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 transfer 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 incumbered, 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.

None of these sources ha[s] been presented by the petitioners.

It appears also that the original certificate of title is still missing and has to be reconstituted on the basis of the sources enumerated in Sec. 2 of RA 26. Thus, the authenticated decree of registration could be a basis for the reconstitution of the original certificate of title but not of the transfer certificate of title. In this case, the decree was issued in the name of Donato Exchivarria; however, there is no showing how the parcels of land in question were transferred to Jose Tan.[15] (Emphasis and underscoring supplied),

DENIED the petition by Decision of September 14, 1998.

The Mateos’ Motion for Reconsideration of the trial court’s decision having been denied, they appealed to the Court of Appeals (CA) upon the following

ASSIGNMENT OF ERRORS

- The trial court – Regional Trial Court, Third Judicial Region, Branch 2, Balanga, Bataan, -- erred in declaring that the Original copy of Transfer Certificate of Title No. T-38769 is “missing”;

- The trial court erred in denying the instant petition, despite overwhelming evidence, documentary and oral, showing sufficient and proper basis for the reconstitution of the lost original and owner's duplicate copy of Transfer Certificate of Title No. T-38769;
- And the trial court erred in dismissing the instant petition; [16]

By Decision of May 2, 2001, the appellate court, citing Section 3 of R.A. No. 26 which enumerates the sources from which TCTs shall be reconstituted, declared as follows:

Since the provision contains the qualification – “as may be available” – the presentation of any of the sources enumerated above is sufficient.

The trial court erred in not giving weight to the photocopy of the owner's duplicate of Transfer Certificate of Title No. T-38769 (Exhibit “I”) as a secondary evidence falling under Section 3(a) or even Section 3(f) as abovequoted.

The Rules of Court has provided a procedure by which the copy of the original document is admissible as evidence, hence:

Section 5. When original document is unavailable – When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. (Rule 130, Rules of Court)

Based on jurisprudence, the aforecited provision requires compliance with the following order of proof: “existence; execution; loss; content.” A variation in the order may be allowed in the exercise of the court's discretion. (De Vera vs. Aguilar, 218 SCRA 602, 606 [1993] and; Lazatin v. Campos, 92 SCRA 250, 262 [1979]).

The existence, execution and contents of the subject certificate were proven by the submission of the following evidence [of the Mateos] . x x x

x x x

With respect to the loss of the owner's copy of the subject certificate, petitioner Lorenzo Mateo testified [on how it was lost].

x x x

[T]he requirements of the rules of court have been complied [with] for the purpose of introducing secondary evidence as the exception to the best evidence rule (Section 3 and 5, Rule 130, Rules of Court). Appellants presented to the trial court a copy of the document (Exhibit “I”), the cause of its unavailability which is the loss of the records while in the possession of the National Bureau of Investigation and the testimonies of appellant Lorenzo Mateo, Jose Y. dela Cruz and Mona Liza Esguerra. The testimonies of the last two witnesses, being public officials, enjoy the disputable presumption of regularity of official duties which has remained un rebutted (Section 3(m), Rule 131, Rules of Court). The photocopy of the subject certificate (Exhibit “I”), as a secondary evidence of the original thereof, is the source listed under Section 3(a) of Republic Act No. 26 and thus, a legally-recognized basis for the reconstitution of the certificate.

Even a strict interpretation of section 3(a) of Republic Act No. 26 will not prevent Us from giving probative weight to the photocopy of Transfer Certificate of Title No. 38769 (Exhibit “I”) because the document may likewise fall under subparagraph (f) of the same provision, that is, “Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.” In Heirs of Felicidad Dizon v. Discaya, 303 SCRA 197, 207 (1999), the provision of Section 2(f) which is identical to Section 3(f), both of Republic Act No. 26, has been interpreted to refer to similar documents previously enumerated

therein, that is, those mentioned in Sections 2(a), (b), (c) and (d).” Exhibit “I” is the photocopy of the owner’s copy of Transfer Certificate of Title No. 38769 expressly listed in Section 3(a) of the same law and being not only similar but identical thereto, thus satisfies the requirement of the law. Even Decree No. 133969 marked as Exhibits “O”, “O-1” to “O-2”, is another available source under Section (f) thereof.[17] (*Italics in the original; emphasis and underscoring supplied*)

The CA accordingly rendered judgment in favor of the Mateos and disposed in this wise:

WHEREFORE, premises considered, the appeal is hereby GRANTED. The Orders dated September 14, 1998 and January 22, 1999, are hereby REVERSED and SET ASIDE, and a new one entered declaring the lost original copy of TCT No. T-38769 of the Register of Deeds of Balanga, Bataan, as well as the lost owner’s duplicate copy thereof, as null and void, and ordering the Land Registration Authority and/or the Register of Deeds to reconstitute the original copy of Transfer Certificate of Title No. T-38769 in the name of Jose Tan for Lots Nos. 1186 and 1187, on the basis of the decision dated March 17, 1969 (Exh. “M”), Decree No. N-133969 dated March 11, 1971 (Exh. “O”) and xerox copy of TCT No. 38769 (Exh. “I”), and for aforementioned public officials to issue, upon payment of the lawful fees therefor to petitioners-appellants the owner’s duplicate copy of said TCT No. T-38769 in the name of Jose Tan in exactly the same terms and conditions in lieu of the lost one. No costs.

SO ORDERED. (*Emphasis in the original; underscoring supplied*)[18]

Hence, the present petition for review on certiorari lodged by the REPUBLIC upon the sole ground that the CA erred “in giving evidentiary weight to the alleged photocopy of the title” — basis of its order for the reconstitution of the original and owner’s copy of the title.

Petitioner argues that “when the subject of inquiry is the contents of a document, no evidence is admissible other than the original document itself except in the instances mentioned in Section 3, Rule 130 of the Rules of Court,” adding that mere photocopies of documents are inadmissible pursuant to the best evidence rule,” it citing *Heirs of Severa P. Gregorio v. Court of Appeals*. [19]

Petitioner further argues that before secondary evidence may be admitted, the proponent must first establish the former existence of the instrument, citing *Lazatin v. Campos et al.* [20]

Petitioner concludes that there being no showing that the TCT previously existed, the photocopy not having been authenticated by the Registry of Deeds of Bataan, admission of such copy violates the best evidence rule, citing *People v. Sto. Tomas*. [21]

Finally, petitioner, passing on the receipt dated March 8, 1973 covering the pulling out of 93 documents from the Bataan Registry of Deeds including the TCT subject of the case and its mother title, the Original Certificate of Title (OCT), makes the following observations:

The 1997 tax declarations (Exhs. “U” and “U-1”) as well as the tax receipts (Exhs. “K” to “K-7”) do not prove the prior valid existence of TCT No. 38769 since these evidence are recent documents that were prepared after both original and owner’s duplicate of said certificate of title were supposedly lost.

Neither does the receipt dated March 8, 1973 prove the prior valid existence of said TCT-38769. Said evidence, in fact, put to doubt such claim. The receipt dated March 8, 1973 (Exh. “T” – “T-3”) shows that the said certificate of title is of doubtful origin since it was being investigated by the National Bureau of Investigation. Curiously, since the time the said title was taken by the NBI in 1969, there was no evidence of any effort from Jose Tan, the alleged registered owner, to cause its return to the Bataan Registry of Deeds. Such prolonged inaction may be deemed as an implied admission of the title’s dubious origin.

Reconstitution requires that the subject title was validly existing at the time of the loss. An invalid title cannot

be reconstituted.

The Decision [of Judge Tizon] dated March 17, 1969, (Exh. “M”) and the Decree dated March 11, 1971 issued pursuant thereto, do not constitute sufficient basis for granting the reconstitution of TCT No. T-38769 in the name of Jose Tan considering that, at most, these documents tend to establish the original registration of the subject property in the name of Donato Echiverri (sic). As correctly noted by the trial court [Branch 2 of the RTC of Balanga], “there is no showing how the parcels of land in question were transferred to Jose Tan” (p. 5, Decision dated September 14, 1998). The said order and decree, therefore, establish only the prior existence of OCT No. N-205 but not that of TCT No. T-38769 in the name of Jose Tan.[22] (Emphasis in the original; underscoring supplied)

The CA’s reliance, as another basis of reconstitution, on the March 17, 1969 certified photocopy of Judge Tizon’s decision awarding to Donato Echivarria from whose OCT the TCT subject of reconstitution was transferred does not lie for, in the first place, as noted by the trial court, “there is no showing how the parcels of land were transferred to Jose Tan,” the Mateos’ predecessor-in-interest.

Section 3 of R.A. No. 26, “AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED,” which has been quoted by the trial court in its decision, enumerates the sources-documents-bases of a reconstitution of a transfer certificate of title. To repeat, they are, in the following order:

- the owner’s duplicate of the title
- the co-owner’s mortgagee’s, or lessee’s duplicate of the title
- a certified copy of the title previously issued by the register of deeds or by a legal custodian
- an authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the OCT was issued
- a document, on file in the registry of deeds, by which the property . . . is . . . encumbered or an authenticated copy of said document showing that its original had been registered; and any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed title.

Since, except for the last above-enumerated document, the Mateos have failed to present any of the other documents, the rule on secondary evidence under Sec. 5 of Rule 130 applies. Section 5 of the rule provides:

SEC. 5. When original document is unavailable. — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on its part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

As the immediately quoted provision of the Rules directs, the order of presentation of secondary evidence is: existence, execution, loss, contents. The order may, however, be changed if necessary in the discretion of the court. The sufficiency of the proof offered as a predicate for the admission of an allegedly lost document lies within the judicial discretion of the trial court under all the circumstances of the particular case.[23]

Assuming that the existence and execution of the original of the TCT has been satisfactorily shown, and that it was taken in 1973 by the Department of Justice and the National Bureau of Investigation (NBI) in connection with the investigation of the judge on whose order the OCT from which the TCT was transferred, which OCT was also taken by said government agencies, there is no satisfactory showing that the TCT has been lost.

By Lorenzo Mateo’s own information, a year before he testified,[24] he talked to the NBI agent, Ramon Befetel,

who received the 93 documents for Vidal Tombo. Why said agent, who admittedly was “still in the NBI main office,”[25] was not presented to shed light on the whereabouts of the TCT, no reason has been proffered.

In fine, the Mateos have not satisfactorily shown that the original of the TCT has been lost or is no longer available. On this score alone, the Mateos’ petition for reconstitution fails.

In any event, even assuming that the original of the TCT was lost or is no longer available, not only is the photocopy of the alleged owner’s duplicate copy thereof – Exh. “1”[26] partly illegible. When, where and under what circumstances the photocopy was taken and where it was kept to spare it from being also “lost” were not even shown. These, not to mention the conduct by the Department of Justice and NBI of an investigation behind the issuance of the OCT and TCT caution and lead this Court to rule against the sufficiency of the Mateos’ evidence and propriety of a grant of their petition for reconstitution.

WHEREFORE, the challenged decision of the Court of Appeals is hereby REVERSED and SET ASIDE. The September 14, 1998 Decision of Branch 2 of the Regional Trial Court of Balanga, Bataan denying the petition for reconstitution in Cadastre Case No. R-237-97, “Reconstitution of the Original Copy as Well as the Owner’s Duplicate Copy of TCT No. T-38769; Sps. Lorenzo M. Mateo and Feliciano Jacob-Mateo, Petitioners,” is hereby REINSTATED.

No pronouncement as to costs.

SO ORDERED.

Panganiban, (Chairman), and Corona, JJ., concur
Sandoval-Gutierrez, J., on leave.

[1] RTC Records at 1.

[2] TSN, April 23, 1998 at 5.

[3] RTC Records at 190.

[4] The last two digits of the year “1978” (expiration of the notarial commission) appear superimposed as do the same two digits in the entry after “Series” appearing at the bottom left portion of the reverse side of the one-page deed.

[5] Id. at 7.

[6] Id. at 193.

[7] Id. at 194-199.

[8] Id. at 200.

[9] Exh. “R,” Id. at 203.

[10] Ibid.

[11] Id. at 205-207.

[12] TSN, June 2, 1998 at 20.

[13] Id. at 208-209.

[14] Id. at 209.

[15] Id. at 213-214.

[16] CA Rollo at 31.

[17] Id. at 113-117.

[18] Id. at 117-118.

[19] 300 SCRA 565 (1998).

[20] 92 SCRA 250 (1979).

[21] 138 SCRA 206 (1985).

[22] Rollo at 19-20.

[23] Lazatin v. Campos, 92 SCRA 250 (1979).

[24] TSN, June 2, 1998 at 21.

[25] Id. at 22.

[26] Vide note 5.

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