

HEIRS OF THE LATE JOSE DE LUZURIAGA, REPRESENTED BY JOSE DE LUZURIAGA, JR., HEIRS OF MANUEL R. DE LUZURIAGA, HEIRS OF THE LATE REMEDIOS DE LUZURIAGA-VALERO, AND THE LATE NORMA D...

G.R. No. 168848. June 30, 2009

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

Before us are two petitions under Rule 45 interposed by the heirs of the late Jose De Luzuriaga, assailing the November 26, 2004 Decision[2] and May 25, 2005 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 75321. The first is a Verified Petition for Review on Certiorari under G.R. No. 169019, while the second is styled Supplemental Petition and docketed as G.R. No. 168848.

The assailed CA decision and resolution reversed and set aside the Orders dated August 31, 2001[4] and October 24, 2002[5] in Cadastral Case No. 97-583 of the Regional Trial Court (RTC), Branch 51 in Bacolod City.

The Facts

Subject of the instant controversy is Lot No. 1524 of the Bacolod Cadastre, particularly described as follows:

A parcel of land (Lot No. 1524 of the Cadastral Survey of Bacolod), with the improvements thereon, situated in the Municipality of Bacolod. Bounded on the N. and NE., by the Lupit or Magsungay Pequeño River; on the SE., by Calle Araneta and Lots Nos. 440, 442 and 441; on the SW., by the Sapa Mamlot; and on the W. by Creeks x x x; containing an area of [TWO HUNDRED SIXTY EIGHT THOUSAND SEVEN HUNDRED AND SEVENTY TWO (268,772) square meters], more or less.[6]

On May 16, 1997, petitioners filed an Application for the Registration of Title, docketed as Cad. Case No. 97-583 before the RTC. In it, the subject lot was specifically identified as Lot No. 1524, AP-06-005774, Cad. 39, Bacolod Cadastre, situated in the City of Bacolod, Island of Negros. The survey plan, conducted by Geodetic Engineer Eluminado E. Nessia, Jr. and duly approved on May 17, 1997 by the Department of Environment and Natural Resources (DENR) Regional Office, Iloilo City; and the technical description of the subject lot, prepared by the Office of the Regional Technical Director, Land Management Services, DENR, Region VI, Iloilo City, were submitted to the RTC.

On May 12, 1998, the application was amended to state, thus: "x x x that the parcel of land in question be ordered registered and that an original Certificate of Title be issued in the name of the late Jose R. [De] Luzuriaga, Sr. pursuant to Decree No. 22752 covering Lot No. 1524 of Bacolod Cadastre."[7]

Subsequently, the RTC issued an Order of general default except as against respondent Republic of the Philippines, which entered its due appearance through the Office of the Solicitor General (OSG) which, in turn, designated Bacolod Assistant City Prosecutor Abraham Bayona to represent the OSG at the trial.

Among the evidence petitioners adduced during the hearings was a copy of Decree No. 22752[8] dated October 7, 1916, issued by the General Land Registration Office (GLRO) pursuant to the decision in the cadastral case confirming and granting unto the late Jose R. De Luzuriaga full ownership of Lot No. 1524.

RTC Decision Granting Application for Registration of Lot 1524

By Decision[9] dated May 24, 1999, the trial court ratified its order of general default and judicially confirmed the incomplete title of the late De Luzuriaga, Sr. over Lot No. 1524 pursuant to Decree No. 22752. The fallo reads:

WHEREFORE, premises considered, the order of general default previously entered is ratified and JUDGMENT is hereby rendered confirming the title of the late Jose R. De Luzuriaga, Sr. over Lot No. 1524 of Bacolod Cadastre under Decree No. 22752 dated October 7, 1916 (Exh. "K" & "L") identified in the approved Survey Plan (Exh. "M") and technically described in the Technical Description (Exh. "N").

As soon as this decision becomes final, let an Original Certificate of Title be issued in the name of the late Jose R. De Luzuriaga, Sr., pursuant to Decree No. 22752 covering Lot No. 1524 of Bacolod Cadastre in accordance with law.

SO ORDERED.

The OSG, for the Republic, received a copy of the Decision on June 22, 1999, but opted not to file an appeal.

Pursuant to the above decision the Bacolod Registry issued Original Certificate of Title (OCT) No. RO-58 in the name of De Luzuriaga, Sr.

DAALCO Sues for Quieting of Title

Meanwhile, in September 1999, Dr. Antonio A. Lizares, Co., Inc. (DAALCO) filed a Complaint[10] against petitioners before the RTC for Quieting of Title, Annulment and Cancellation of [OCT] No. RO-58 with prayer for injunctive relief and damages, docketed as Civil Case No. 99-10924 and entitled Dr. Antonio A. Lizares Co., Inc., (DAALCO) v. Jose R. De Luzuriaga, III, et al.[11] In gist, DAALCO claimed that its predecessor-in-interest, Antonio Lizares, was the registered, lawful, and absolute owner of Lot No. 1524 as evidenced by a Transfer Certificate of Title (TCT) No. 190-R (T-247 [T-19890]) issued by the Register of Deeds (RD) of Bacolod City on February 8, 1939. Said TCT served to replace OCT No. 2765 in the name of Lizares and was issued pursuant to Decree No. 22752, GLRO Cad. Rec. No. 55 as early as November 14, 1916 and registered in the registration book of the Office of the RD of Negros Occidental, at Vol. 10, p. 283.

To buttress its case, DAALCO pointed to the fact that the RD, after the finality of the May 24, 1999 RTC Decision, did not issue an OCT in the name of De Luzuriaga, Sr., as prayed for in the application of petitioners and as ordered by the cadastral court. What the RD instead issued--owing to the issuance in 1916 of OCT No. 2765 in the name of Lizares--was a reconstituted title, i.e., OCT No. RO-58. Finally, DAALCO maintained having been in actual, open, and continuous possession as registered owner of the subject lot.

The Petition for Relief from Judgment by the Republic

On November 24, 1999, or six months after the RTC rendered its Decision, the Republic through the OSG, however, sought the annulment thereof via an unverified Petition for Relief from Judgment[12] filed before the same RTC which rendered the above decision in Cad. Case No. 97-583.

To support its prayer for annulment, the Republic alleged, first, that petitioners failed to indicate in their application all the heirs of the late De Luzuriaga, Sr. and their corresponding authorization for the application in their behalf.

Second, the Republic asserted that petitioners cannot use Decree No. 22752 as basis for the application of land registration as said decree effectively barred said application. It invited attention to Section 39 of Presidential Decree No. (PD) 1529, which requires the simultaneous issuance of the decree of registration and the corresponding certificate of title. As argued, the policy of simultaneous issuance prescribed in the decree has not been followed in the instant case.

Third, the Republic, relying on *Metropolitan Waterworks and Sewerage System v. Court of Appeals*,^[13] contended that no new title over the subject lot can be issued in favor of the applicant, the same lot being already covered by a title, specifically OCT No. 2765 in the name of Lizares.

Fourth, again citing jurisprudence,^[14] the Republic maintained that the applicant, even if entitled to registration by force of Decree No. 22752, is already barred by laches, the same registration decree having been issued 83 long years ago.

In the meantime, Judge Anita G. Chua replaced retired Judge Ramon B. Posadas as presiding judge of the RTC, Branch 51 in Bacolod City.

The Ruling of the RTC

By Order dated August 31, 2001, Judge Chua, on the finding that the "petition for relief from judgment is not sufficient in form and substance and having been filed out of time,"^[15] denied the petition. Specifically, the RTC found the Republic's petition to be unverified and filed beyond the 60th day from receipt on June 22, 1999 of a copy of the May 24, 1999 RTC Decision.

Subsequently, the Republic moved for reconsideration^[16] of the above denial order arguing that its procedural lapses are not fatal to its case. It cited *Uy v. Land Bank of the Philippines*,^[17] in which the Court held that the merits of the substantive aspects of the case are deemed a special circumstance or compelling reason for the reinstatement of its petition and prayed for the relaxation of the Rules. Moreover, the OSG alleged that the RTC did not acquire jurisdiction over Cadastral Case No. 97-583 inasmuch as the corresponding amended application for registration dated May 5, 1998 was not published and a copy of which the Republic was not served.

Finally, the Republic raised anew the argument on the unavailability of Decree No. 22752 as basis for the application of land registration in view of the implementation of Sec. 39 of PD 1529.

The Republic later filed a Supplement (To Motion for Reconsideration) reiterating the merits of its case.

The RTC denied the Republic's motion for reconsideration through an Order of October 24, 2002. In the same order, the trial court observed that the Republic is actually asking the present presiding judge to review the decision of her predecessor, Judge Posadas, and to annul the same decision. Pursuing the point, the RTC, citing *Miranda v. Court of Appeals*^[18] and *Nery v. Leyson*,^[19] ratiocinated that a judge who succeeds another has no reviewing and appellate authority and jurisdiction over his predecessor's final judgment on the merits of a case, such authority residing, as it does, in the ordinary course of things, with the appellate court.

Aggrieved, the Republic elevated the case before the CA through a Petition for Certiorari under Rule 65. Docketed as CA-G.R. SP No. 75321, the petition raised the sole issue of whether the RTC gravely abused its discretion in denying its petition for relief from judgment.

The Ruling of the CA

On November 26, 2004, the appellate court rendered the assailed decision granting certiorari and ordered the remand of the instant case to the trial court for reception of evidence to determine whether the RTC's Decision confirming the title of the late Luzuriaga, Sr. over Lot 1524 will result in a double titling of the subject lot. The

fallo of the CA's decision reads:

WHEREFORE, premises considered, the instant petition for certiorari is GRANTED. Accordingly, the case is remanded to the court a quo for reception of evidence in order to resolve the issue of whether or not the Decision dated May 24, 1999 confirming the title of the late Jose R. De Luzuriaga, Sr. over Lot No. 1524 of Bacolod Cadastre really resulted to "double titling" and thereafter, to rule on the merits of the petition for relief from judgment.

SO ORDERED.[20]

The CA predicated its ruling on the following factors: (1) the merits of the petition for relief from judgment far outweigh the procedural technicalities that obstruct it, i.e., not verified and filed out of time; and (2) the Republic was able to make out a prima facie case of "double titling," supported by a Letter/Report[21] issued by the Bacolod City RD on December 7, 2001 showing that Lot No. 1524 was already registered under, and an OCT already issued in, another man's name.

Through the equally assailed May 25, 2005 Resolution, the CA denied petitioners' motion for reconsideration.

Hence, we have these petitions, with the supplemental petition filed on July 28, 2005; while the main petition for review on certiorari was filed on August 11, 2005, which explains the lower docket number of the former.

The Issues

Petitioners raise as ground for review in G.R. No. 169019 the following issues and assignment of errors:

A. WITH ALL DUE RESPECT, THE HONORABLE [CA] SERIOUSLY ERRED IN GRANTING THE PETITION FOR CERTIORARI OF THE SOLICITOR GENERAL'S OFFICE, WITHOUT MAKING A DEFINITE FINDING OF ACTUAL PRESENCE OF GRAVE ABUSE OF DISCRETION, COMMITTED BY THE LOWER COURT, VIOLATING THE WELL-KNOWN PRINCIPLE THAT CERTIORARI IS NOT PROPER WHERE THERE IS NO GRAVE ABUSE OF DISCRETION, AND WHEN THERE ARE UNSETTLED FACTUAL CONTROVERSIES IN THE CASE;

B. WITH ALL DUE RESPECT, THE HONORABLE [CA] IN ITS HEREIN CONTESTED DECISION x x x DIRECTLY VIOLATED THE LONG-HELD PRINCIPLE OF "JUDICIAL STABILITY" THAT HOLDS THAT NO REVIEW CAN BE HAD BY ONE COURT OF A DECISION OF ANOTHER COURT OF CONCURRENT JURISDICTION, AND THE RULE THAT NO SUCCEEDING JUDGE CAN REVIEW A DECISION OF THE PREVIOUS PRESIDING JUDGE, AS HELD BY THE SUPREME COURT IN HACBANG V. LEYTE AUTOBUS CO., INC. 62 O.G. 31, Aug. 1, 1966, MIRANDA VS. COURT OF APPEALS, 71 SCRA 295, AND NERY VS. LEYSON, 339 SCRA 23;

C. WITH ALL DUE RESPECT, THE SUBJECT DECISION OF THE HONORABLE [CA] VIOLATED THE PRINCIPLE OF RES JUDICATA OR FINALITY OF JUDGMENT;

D. WITH ALL DUE RESPECT, THE HONORABLE [CA] GRIEVOUSLY ERRED IN GRANTING THE OSG'S PETITION FOR CERTIORARI UNDER RULE 65, WHICH WAS CLEARLY RESORTED TO FOR THE FAILURE OF THE SOLICITOR GENERAL TO SEASONABLY FILE A MOTION FOR RECONSIDERATION, NOTICE OF APPEAL, OR PETITION FOR RELIEF FROM JUDGMENT OF THE ORDER OR OF THE DECISION OF THE HONORABLE COURT, RTC BRANCH 51, IN THE CASE A QUO, WHICH RESORT OR DEVISE IS THOROUGHLY FROWNED UPON IN OUR JURISDICTION;

E. THE HONORABLE [CA], WITH ALL DUE RESPECT, GRIEVOUSLY ERRED IN FINDING THAT THERE IS AN "EXCEPTIONAL CASE" IN THIS ABOVE-ENTITLED CASE WHICH JUSTIFIES THE GRANT OF THE PETITION, WHEN IN TRUTH AND IN FACT, THERE IS NONE;

MOST IMPORTANTLY:

F. A POTENTIAL FOR SERIOUS CONFLICT OF DECISIONS HAS BEEN CREATED BY THE ORDER OF THE HONORABLE [CA] WITH ALL DUE RESPECT, IN REMANDING THE CASE FOR FURTHER PROCEEDINGS TO THE COURT A QUO, WHEN THERE IS ALREADY A SIMILAR CASE INVOLVING PRINCIPALLY THE SAME ISSUE OF ALLEGED "DOUBLE TITLING" IN ANOTHER BRANCH OF THE [RTC] OF NEGROS OCCIDENTAL NAMELY, BRANCH 46, IN THE CASE ENTITLED DAALCO VS. LUZURIAGA, ET AL. WITH CIVIL CASE [NO.] 99-10924, FOR QUIETING OF TITLE.[22]

In G.R. No. 168848, petitioners raise the sole issue in their Supplemental Petition of:

WHETHER OR NOT THE RESOLUTION DATED NOVEMBER 26, 2004 AND RESOLUTION DATED MAY 25, 2005 WERE CONTRARY TO LAW AND/OR JURISPRUDENCE OF THE SUPREME COURT[23]

In the meantime, on September 12, 2005, DAALCO filed a Motion for Leave to Intervene,[24] apprising the Court of, among other things, the pendency of its complaint docketed as Civil Case No. 99-10924.

The Court's Ruling

The core issue in these petitions is whether the appellate court gravely abused its discretion in granting the Republic's petition for relief from judgment despite: (1) the May 24, 1999 Decision in Cadastral Case No. 97-583 having become final and executory; and (2) the issue of double titling having been raised in DAALCO's complaint in Civil Case No. 99-10924 for quieting of title and cancellation of OCT No. RO-58 before the RTC, Branch 46 in Bacolod City.

The petitions are bereft of merit.

The CA acted within its sound discretion in giving, under the factual premises and for reasons set out in the assailed decision, due course to the Republic's petition for relief from judgment and remanding the case to the trial court for reception of evidence. Under the peculiar facts and circumstances of the case, we agree with the appellate court's holding that the RTC committed grave abuse of discretion in dismissing the petition for relief from the May 24, 1999 Decision.

Procedural Issue: Relaxation of the Rules to Promote Substantial Justice

We can concede that the unverified petition for relief from judgment of the OSG was filed out of time. Such a petition must be filed within: (a) sixty (60) days from knowledge of judgment, order, or other proceedings to be set aside; and (b) six (6) months from entry of such judgment, order, or other proceedings.[25] In the case at bar, the OSG admits receiving the May 24, 1999 Decision on June 22, 1999. Thus, when it did not file a notice of appeal of said decision within the 15-day reglementary period for filing an appeal, the OSG was left with the remaining remedy of relief from judgment subject to the conditions provided under Secs. 1 and 3 of Rule 38 of the Rules of Court. But, as thing turned out, the OSG, for the Republic, belatedly filed its petition only on November 24, 1999, or more than five months from receipt or knowledge of the May 24, 1999 RTC Decision.

The Republic ascribes its failure to file a timely notice of appeal or a petition for relief from judgment on the negligence of the OSG person--in charge of receiving all pleadings assigned to Asst. Solicitor Josefina C. Castillo--who belatedly gave the copy of the RTC Decision to the latter due to oversight. And the Republic prays for the relaxation of the rigid application of the Rules based on the merits of its petition for relief from judgment.

While the reglementary periods fixed under the rules for relief from judgment are mandatory in character,[26] procedural rules of the most mandatory character in terms of compliance may, in the interest of substantial justice, be relaxed.[27] Since rules of procedure are mere tools designed to facilitate the attainment of justice, they are not to be applied with severity and rigidity when such application would clearly defeat the very rationale for their existence. In line with this postulate, the Court can and will relax or altogether suspend the application of the rules, or except a particular case from the rules' operation when their rigid application tends to frustrate rather than promote the ends of justice.[28]

The peculiarities of the instant case impel us to do so now. Foremost of these is the fact that the Republic had properly made out a prima facie case of double titling over the subject lot, meriting a ventilation of the factual and legal issues relative to that case.

Apropos the matter of verification which the OSG failed to observe, it cannot be over-emphasized that the requirement on verification is simply a condition affecting the form of pleadings. Non-compliance with it is not jurisdictional, and would not render the pleading fatally defective.[29] A pleading required by the Rules of Court to be verified may be given due course even without a verification if the circumstances warrant the suspension of the rules in the interest of justice.[30] So it must be here.

Substantive Issue: Prima Facie Case of Double Titling

Relief from judgment is an equitable remedy; it is allowed only in exceptional cases where there is no other available or adequate remedy.[31] And its determination rests with the court. In the instant case, certain attending facts and circumstances, as shall be set forth below, make for an exceptional case for allowing relief from judgment.

Register of Deeds report shows doubling titling when another OCT is issued for subject lot

First. The Letter/Report[32] issued by the Bacolod City RD on December 7, 2001, ineluctably indicating the registration of subject Lot No. 1524 and the subsequent issuance of an OCT in the name of another person, provides a reasonable ground to believe that a case of double titling would result should another title issue for the same lot in the name of De Luzuriaga, Sr. Thus, there exists a compelling need for another hard look at Cad. Case No. 97-583 and for the trial court to address the likelihood of duplication of titles or "double titling," an eventuality that will undermine the Torrens system of land registration.

OCT already issued for subject lot

Second. The prior issuance on November 14, 1916 of OCT No. 2765 in the name of Lizares over Lot No. 1524 persuasively buttresses a prima facie case on the issue of double titling. Civil Case No. 99-10924 for quieting of title filed by DAALCO before the RTC, Branch 46 in Bacolod City tends to show that DAALCO's predecessor-in-interest, Lizares, was issued OCT No. 2765 in 1916 ostensibly pursuant to Decree No. 22752, GLRO Cad. Rec. No. 55. This is confirmed by the adverted Letter/Report.

Decree No. 22752 is the same decree petitioners relied upon in Cad. Case No. 97-583 for judicial confirmation of imperfect title over subject Lot No. 1524. Obviously, one and the same decree cannot serve as basis for a valid grant of separate titles in fee simple over the same lot to two different persons.

Ownership of subject lot best ventilated in civil case

Third. Since petitioners and DAALCO separately claim owning Lot No. 1524, the ownership issue would be best litigated in Civil Case No. 99-10924 filed by DAALCO for quieting of title. Lest it be overlooked, both parties

anchor in a way their ownership claim on Decree No. 22752. It ought to be stressed, however, that an OCT was issued several months after Decree No. 22752 was rendered, and the certificate was issued to Lizares, not to De Luzuriaga, Sr. De Luzuriaga, Sr., during his lifetime, never contested or assailed the title issuance to Lizares, suggesting the possibility of a lawful transfer of ownership from one to the other during the period material. In any case, for purposes of Cad. Case No. 97-583, the fact that an OCT was already issued for the subject lot would, perforce, foreclose the issuance of another OCT for the same lot.

As has been consistently held, neither prescription nor laches may render inefficacious a decision in a land registration case. [33] In line with this doctrine of the inapplicability of prescription and laches on registration cases, the Court has ruled that "the failure on the part of the administrative authorities to do their part in the issuance of the decree of registration cannot oust the prevailing party from ownership of the land." [34] Following these doctrinal pronouncements, petitioners argue that they can rightfully bank on Decree No. 22752 to defeat the claim of DAALCO.

Petitioners' above posture may be given cogency but for the issuance, pursuant to the same decree, of OCT No. 2765 in the name of Lizares. Nothing on the records adequately explains, nor do petitioners attempt to do so, how a registration decree adjudicating Lot No. 1524 to De Luzuriaga, Sr. became the very medium for the issuance of a certificate of title in favor of Lizares. Consequently, whatever rights petitioners might have over the subject lot as heirs of De Luzuriaga, Sr. ought to be litigated against the successors-in-interest of Lizares to put a final rest to their clashing claims over Lot No. 1524.

Issuance of reconstituted title beyond the judgment in the cadastral case

Fourth. OCT No. RO-58 was issued by the RD of Bacolod City purportedly in execution of the final and executory decision in Cad. Case No. 97-583. Yet the Court notes that the title issuance went beyond the scope of the judgment sought to be executed. The second paragraph of the fallo of the May 24, 1999 RTC Decision granting and confirming ownership of subject Lot No. 1524 unto the late Jose R. De Luzuriaga clearly ordered, thus:

As soon as this decision becomes final, let an Original Certificate of Title be issued in the name of the late Jose R. De Luzuriaga, Sr., pursuant to Decree No. 22752 covering Lot No. 1524 of Bacolod Cadastre in accordance with law.[35]

But the RD of Bacolod City--in grave abuse of discretion, instead of issuing an OCT in the name of De Luzuriaga, Sr., as directed by the court--issued a reconstituted title over Lot No. 1524 in the name of the heirs of De Luzuriaga, Sr. Not lost on the Court is the fact that a reconstituted title is ordered issued in an ordinary civil case, not in a cadastral proceeding for judicial confirmation of imperfect title over unregistered property, as in the instant case.

Basic is the rule that execution must conform to what the decision dispositively decrees.[36] Logically, an execution is void if it does not strictly conform to every essential particulars of the judgment rendered.[37] Be that as it may, the issuance of the reconstituted title is rendered moot and ineffective by the grant of relief from judgment.

Cadastral Case and Quieting of Title Case can proceed independently

Fifth. Petitioners' contention that a petition for relief from judgment and the special civil action for quieting of title cannot proceed separately is without solid basis. Cad. Case No. 97-583 and the suit for quieting of title in Civil Case No. 99-10924 each involves different concerns and can proceed independently. The cause of action of

the Republic's petition for relief from judgment of "double titling" of the subject lot is different from DAALCO's quest for quieting of title. From another perspective, DAALCO basically seeks to nullify the issuance of OCT No. RO-58 in the name of the De Luzuriaga heirs, while the Republic's petition assails the grant of ownership to De Luzuriaga, Sr. over a parcel of land duly registered under OCT No. 2765 in the name of Lizares, who thereafter transferred the title to his heirs or assigns. In fine, both actions may proceed independently, albeit a consolidation of both cases would be ideal to obviate multiplicity of suits.

The RTC Had Jurisdiction in Cadastral Case

The Republic, after participating in the proceedings below, has raised the issue of jurisdiction, drawing attention to the non-publication of the amended application for registration during the trial of Cad. Case No. 93-857. The Court cannot see its way clear to the jurisdictional challenge posed by the Republic. As it were, the Republic entered its appearance in Cad. Case No. 97-583 represented by prosecutor Bayona. The petitioners in that case appeared to have complied with the essential jurisdictional requirement of publication. The required survey plan, technical description, and original tracing cloth have been duly presented and submitted as evidence. Prosecutor Bayona obviously found the cadastral proceedings to have been in order, else, he would have duly protested and assailed the same.

We hardly can subscribe to the Republic's argument that the publication of the amendment in petitioners' application is a condition sine qua non for the RTC, acting as cadastral court, to acquire jurisdiction. Sec. 7[38] of Act No. 2259, otherwise known as the Cadastral Act, and Sec. 35[39] of PD 1529, otherwise known as the Land Registration Decree, provide for the publication of the application for registration and the schedule of the initial hearing. This is so since judicial cadastral proceedings, like ordinary administrative registration, are in rem, and are governed by the usual rules of practice, procedure, and evidence. Due publication is required to give notice to all interested parties of the claim and identity of the property that will be surveyed. And any additional territory or change in the area of the claim cannot be included by amendment of the plan or application without new publication, otherwise the cadastral court does not acquire jurisdiction over the additional or amended claim. But where the identity and area of the claimed property are not the subjects of amendment but other collateral matters, a new publication is not needed.

In the case at bar, there is no dispute that due publication was made for Lot No. 1524, its identity and area. The amendment in petitioners' application in the relief portion neither altered the area and identity of the subject lot nor added any territory. Thus, no new publication is required. Besides, the Republic, through Prosecutor Bayona, has been duly notified of such amendment. Consequently, the Republic could not plausibly argue that it was deprived of its day in court.

Anent DAALCO's motion to intervene and interest over the subject lot, it may address its motion to the lower court, although intervention may no longer be necessary in the light of Civil Case No. 99-10924 pending before the RTC, Branch 46 in Bacolod City, where DAALCO can properly ventilate its ownership claim as against that of petitioners, who, incidentally, are impleaded in said case as respondents/defendants.

A final consideration. A petition for relief is in effect a second opportunity for an aggrieved party to ask for a new trial.[40] Once granted either by the trial court or the appellate court, the final judgment whence relief is sought is deemed set aside and the case shall stand as if such judgment had never been rendered. In such a case, "the court shall then proceed to hear and determine the case as if a timely motion for new trial or reconsideration had been granted by it." [41]

Here, the presiding judge of the RTC, Branch 51 in Bacolod City, by the remand to the court of Cad. Case No. 97-583, is not asked to review and/or annul a final judgment of his or her predecessor or of another RTC, as there

is nothing for the presiding judge to nullify in the first place, the annulling act having been taken by the CA. Hence, the trial court's invocation, as seconded by petitioners, of the teachings of Nery,[42] is off-tangent. Nery, it is true, held that a trial court is without jurisdiction to annul a final judgment of a co-equal court. Nery was, however, cast against a different factual and legal milieu. Suffice it to state for the nonce that Nery involved a final judgment of the RTC against which no petition for relief has been interposed. In view of the first reason, the final judgment was not effectively set aside, unlike here.

WHEREFORE, the Verified Petition for Review on Certiorari and Supplemental Petition are hereby DENIED for lack of merit. Accordingly, the CA's November 26, 2004 Decision and May 25, 2005 Resolution in CA-G.R. SP No. 75321 are hereby AFFIRMED.

Costs against petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Peralta, JJ., concur.

[1] Luzuriaga in some parts of the records.

[2] Rollo (G.R. No. 168848), pp. 21-25. Penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Ramon M. Bato, Jr.

[3] Id. at 48-49.

[4] Id. at 181-183. Penned by Judge Anita G. Chua.

[5] Id. at 195-197.

[6] Id. at 226-227.

[7] Id. at 168.

[8] Id. at 226-228.

[9] Id. at 170-174. Penned by Presiding Judge Ramon B. Posadas.

[10] Id. at 240-258.

[11] The complete case title is: Dr. Antonio A. Lizares Co., Inc., (DAALCO) v. Jose R. De Luzuriaga, III, Lance, Rock, Anthony, Perpetua, and Deke Mark all surnamed Gianon representing the heirs of Norma De Luzuriaga Gianon, Irene Garovillo De Luzuriaga, Rolando, Rogie, Rogine, Mark, Mat and Bernie all surnamed De Luzuriaga Diaz, Desiree Depallo, Israel De Luzuriaga and Frederick De Luzuriaga, representing the heirs of Manuel De Luzuriaga, Rosanna, Jeremy, Franklin, Corazon, Teresa, Idoy, Alindajao and Bagatsing, all surnamed Valero, representing the heirs of Remedios De Luzuriaga Valero and the Register of Deeds of Bacolod City.

[12] Rollo (G.R. No. 168848), pp. 175-180, dated November 23, 1999.

[13] G.R. No. 103558, November 17, 1992, 215 SCRA 783.

[14] Garbin v. Court of Appeals, G.R. No. 107653, February 5, 1996, 253 SCRA 187.

[15] Rollo (G.R. No. 168848), p. 183.

[16] Id. at 184-194, dated December 11, 2001.

- [17] G.R. No. 136100, July 24, 2000, 336 SCRA 419.
- [18] No. L-33007, June 18, 1976, 71 SCRA 295.
- [19] G.R. No. 139306, August 29, 2000, 339 SCRA 232.
- [20] Rollo (G.R. No. 168848), p. 25.
- [21] Rollo (G.R. No. 169019), p. 76.
- [22] Id. at 8-9.
- [23] Rollo (G.R. No. 168848), p. 12.
- [24] Id. at 235-239, dated September 6, 2005.
- [25] Reyes v. Court of Appeals, G.R. No. 150722, August 17, 2007, 530 SCRA 468, 474; citing Quelnan v. VHF Philippines, G.R. No. 138500, September 16, 2005, 470 SCRA 73.
- [26] Lynx Industries Contractor, Inc. v. Tala, G.R. No. 164333, August 24, 2007, 531 SCRA 169, 175; Reyes, *supra* note 25.
- [27] Department of Agrarian Reform v. Republic, G.R. No. 160560, July 29, 2005, 465 SCRA 419, 428; citing Yao v. Court of Appeals, G.R. No. 132428, October 24, 2000, 344 SCRA 202, 221.
- [28] Metro Rail Transit Corporation v. Court of Tax Appeals, G.R. No. 166273, September 21, 2005, 470 SCRA 562, 566; citing Go v. Tan, G.R. No. 130330, September 26, 2003, 412 SCRA 123, 128-129.
- [29] Guy v. Asia United Bank, G.R. No. 174874, October 4, 2007, 534 SCRA 703, 716; citing Heavylift Manila, Inc. v. Court of Appeals, G.R. No. 154410, October 20, 2005, 473 SCRA 541 and Robern Development Corporation v. Quitain, G.R. No. 13042, September 23, 1999, 315 SCRA 150.
- [30] Linton Commercial Co., Inc. v. Hellera, G.R. No. 163147, October 10, 2007, 535 SCRA 434, 446; citing Precision Electronics Corporation v. National Labor Relations Commission, G.R. No. 86657, October 23, 1989, 178 SCRA 667, 670.
- [31] Regalado v. Regalado, G.R. No. 134154, February 28, 2006, 483 SCRA 473, 482; citing Tuason v. Court of Appeals, G.R. No. 116607, April 10, 1996, 256 SCRA 158.
- [32] *Supra* note 21.
- [33] Republic v. Nillas, G.R. No. 159595, January 23, 2007, 512 SCRA 286, 299; citing Sta. Ana v. Menla, 111 Phil. 947 (1961) and other cases.
- [34] Republic v. Nillas, *supra*.
- [35] *Supra* note 9.
- [36] Florentino v. Rivera, G.R. No. 167968, January 23, 2006, 479 SCRA 523, 530; citing Jose Clavano, Inc. v. Housing and Land Use Regulatory Board, G.R. No. 143781, February 27, 2002, 378 SCRA 172, 182-183.
- [37] Florez v. UBS Marketing Corporation, G.R. No. 169747, July 27, 2007, 528 SCRA 396, 405; citing Ex-Bataan Veterans Agency, Inc. v. National Labor Relations Commission, G.R. No. 121428, November 29, 1995, 250 SCRA 418.
- [38] Sec. 7. Upon the receipt of the order of the court setting the time for initial hearing of the petition, the

Commission on Land Registration shall cause notice thereof to be published twice, in successive issues of the Official Gazette, in the English language. The notice shall be issued by order of the Court, attested by the Commissioner of the Land Registration Office, x x x.

[39] SEC. 35 (Cadastral Survey preparatory to filing of petition) (b) Thereupon, the Director of Lands shall give notice to persons claiming any interest in the lands, as well as to the general public, of the day on which such survey will begin, giving as fully and accurately as possible the description of the lands to be surveyed. Such notice shall be published once in the Official Gazette, and a copy of the notice in English or the national language shall be posted in a conspicuous place on the bulletin board of the municipal building of the municipality in which the lands or any portion thereof is situated. A copy of the notice shall also be sent to the mayor of such municipality as well as to the barangay captain and likewise to the Sangguniang Panlalawigan and the Sangguniang Bayan concerned. x x x

[40] 1 Regalado, Remedial Law Compendium 400 (8th rev. ed.); citing *Vda. de Sayman v. Court of Appeals*, Nos. L-29479 & 29716, February 21, 1983, 120 SCRA 676.

[41] Rules of Court, Rule 38, Sec. 6.

[42] *Supra* note 19.

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