

**EULALIA LLABAN ABELLA, ET AL., PETITIONERS, VS. HON. JOSE S. RODRIGUEZ, JUDGE OF THE CFI OF CEBU, NECITACION ESTRERA AND REGISTER OF DEEDS OF CEBU CITY, RESPONDENTS.***G.R. No. 17889, December 29, 1962*

Ponente: REGALA, J.

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This is a petition for a writ of certiorari directly filed with this Court.

In the Court of First Instance of Cebu, acting as a cadastral court, respondent Necitacion Estrera filed in Cadastral Case No. 12, LRC Rec. No. 9468, a petition for cancellation of title dated November 17, 1959. The petition alleged that In consideration of P1,000.00, said Necitacion Estrera bought a parcel of land (Lot No. 6002) situated at Guadalupe, Cebu City, from Gregorio Cavan and Pascual Cavan, heirs of Fernando Cavan one of the registered owners of said lot; that the original certificate of title of the lot was lost during the last global war and the same was judicially reconstituted by her in accordance with Republic Act No. 26; that the lot was declared by her for taxation purposes; and that the reconstituted Original Certificate of Title No. RO-1963 covering the aforementioned lot is in her possession. The prayer was for an order to the Register of Deeds of the province of Cebu to cancel the reconstituted Original Certificate of Title in the name of Fernando Cavan and to issue a transfer certificate of title solely in her name.

On November 20, 1959, respondent Judge, sitting as a cadastral Judge, issued an order for the hearing of the petition on December 5, 1959 and the publication of said order requiring all persons interested to appear on that date to show cause why the petition for cancellation should not be granted.

When the case was called for hearing on December 5, 1959, petitioners herein, thru counsel, appeared before the court and registered their opposition to the petition. The Judge, in open court, consequently issued an order on that date giving oppositors ten days time from receipt thereof within which to file a written opposition to the petition.

Accordingly, petitioners filed a written answer and opposition dated December 9, 1960, asserting that they are the heirs of some of the registered owners of the land and that the deed of sale allegedly signed by the heirs of Fernando Cavan is unenforceable against the registered rights, interests, participations and ownerships of the other registered owners. They questioned Necitacion Estrera's authority to cancel these registered rights in as summary proceedings.

Upon notice issued by the deputy clerk of court dated December 16, 1959, the petition was set for hearing on February 12, 1960, but it was later postponed to March 16, 1960. On this latter date, the hearing was again postponed. On July 20 of that same year, another notice of hearing was issued by the deputy clerk setting the case for trial on September 13, 1960 at 8:00 a.m. On this date, however, nobody appeared for petitioners. According to counsel, he was then indisposed and confined in bed, but he believed that another counsel for one of petitioners' co-heirs who used to appear in court in previous meetings would make proper representations in court for the stand of oppositors. Counsel further avers that said Atty. de la Victoria failed to appear in court on September 13,

1960 because he never received any notice of trial supposed to be had that day.

On September 16, 1960, the Judge issued an order dideclaring herein petitioners in default and that the latter's opposition be considered withdrawn. The cadastral deputy clerk was then commissioned to receive evidence that may be adduced by respondent Necitacion Estrera.

On September 16, 1960, the Judge issued an order directing the Register of Deeds of Cebu to cancel Original Certificate of Title No. RO-1963 covering Lot No. 6002, Cebu Cadastre, and once cancelled, to issue a new Transfer Certificate of Title in favor of Necitacion Estrera.

On September 29, 1960, herein petitioners filed a motion for reconsideration of the orders of September 13 and 16, 1960. On October 1, 1960, they also filed an urgent motion with the cadastral court to cancel Transfer Certificate of Title No. 21957 issued by the Register of Deeds of Cebu on September 19, 1960 in the name of Necitacion Estrera.

On November 12, 1960, respondent Judge issued two orders: One denying petitioners' motion for reconsideration, and the other denying their urgent motion dated October 1, 1960.

The present proceedings seek to annul these two last mentioned orders on the main ground that the respondent Judge had no jurisdiction to issue the same.

The petition is meritorious.

The rule is well settled that while, under section 112 of the Land Registration Act, any registered owner of land or other person in interest may, on certain grounds, apply by petition to the cadastral court for a new certificate or the entry or cancellation of a memorandum thereon, such relief can only be granted if there is no adverse claim or serious objection on the part of any party in interest; otherwise, the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs (*Jimenez vs. de Castro*, 40 Off. Gaz. No. 3, 1st Sup., p. 8; *Tanganan, et al vs. Republic*, 94 Phil., 171; 50 Off. Gaz. [1] 115). As well stated by this Court in the case of *Jimenez de Castro*, supra—

"It is not proper to cancel an original certificate of Torrens title issued exclusively in the name of a deceased person, and to issue a new certificate in the name of his heirs under the provisions of section 112 of Act No. 496 when the surviving spouse claims rights of ownership over the lands covered by said certificate."

In other words, relief under section 112 of Act No. 496 can only be granted if there is unanimity among the parties. "Unanimity among the parties" is meant the absence of serious controversy between the parties in interest as to the title of the party seeking relief under said section (*Enriquez et al vs. Atienza, et al.*, 100 Phil., 1072; 53 Off. Gaz., [20] 7231).

Apparently, the petition filed by Necitacion Estrera is for the mere cancellation of an original title and for the issuance of a new transfer certificate of title. But the record shows that the ownership of the land covered by said title sought to be cancelled is under controversy. Thus, while herein respondent Necitacion Estrera claims that she bought Lot No. 6002 of the Cebu Cadastre from the heirs of the registered owner Fernando Cavan, herein petitioners, on the other hand, claim that the said lot is registered in the name of several persons and that they are the legal heirs of some of the registered owners, so that respondent has no right or authority whatsoever to cancel their registered interests and participations in said lot. This is a serious question that should be passed upon by a regular court. It is not a mere incidental or routinary matter that could summarily be disposed by the Court of First Instance in the exercise of its special and limited jurisdiction as land registration court. As was said in the case of *Castillo, et al. vs. Ramos, et al.* 78 Phil., 809; 45 Off. Gaz. p. 183, the remedy provided for in section 112 of Act 496 is summary and not adequate for the litigation of issues pertaining to an ordinary civil action (*Miraflor vs.*

Leaño, 93 Phil., 446; 49 Off. Gaz. [7] 2775).

Respondent Estrera contends that since the opposition to the petition for cancellation is not under oath, respondent Judge did not commit a mistake in declaring oppositors (petitioners) in default and in considering their opposition as withdrawn on September 13, 1960. Suffice it to state here that the provisions of Act 496 do not require that answer or opposition to a petition or motion filed under section 112 of that Act be under oath. It is worthy to note that Estrera's petition itself was not under oath, and there is no reason for her to expect that the answer thereto should be verified.

The court below as a cadastral court having no jurisdiction to pass upon the petition for cancellation of title filed by Necitacion Estrera, the said petition is hereby dismissed, without prejudice to the filing of a new one with the proper court. Costs against respondent.

Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

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