

GODOFREDO NAVERA, PETITIONER VS. HON. PERPECTO QUICHO, ETC., ET AL., RESPONDENTS.*G. R. No. 18339. June 29, 1962*

Ponente: BAUTISTA ANGELO, J.

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On January 24, 1961, the municipality of Ligao filed with the Court of First Instance of Albay a petition under Section 112 of Act No. 496, as amended, for the correction of Transfer Certificate of Title No. T-9304 issued in the name of Godofredo Navera, covering Lot No. 2793-A, on the ground that a portion of 123 square meters was erroneously included in said title during the cadastral survey of Ligao.

Navera filed a motion to dismiss based on the ground that the relief which petitioner seeks to obtain cannot be granted under Section 112 of Act 496 because the same would involved the opening of the original decree of registration. He contends that, under said section, the court can only authorize an alteration which may not impair the rights recorded in the decree, or one which will not prejudice such rights, or one which is consented to by all parties concerned, or can authorize the correction of any error or mistake which would not involve the reopening of the original decree of registration. Here the petition will have such effect, for it will involve the correction of the technical description of the land covered by the certificate of title in question, segregating therefrom the portion alleged to have been erroneously included, which eventually will cause the amendment of the original decree' of registration. This cannot be done at this stage after the lapse of 23 years from the issuance of the certificate of title.

After hearing both parties, the court a quo issued an order denying the motion to dismiss and requiring Navera to answer the petition within the reglementary period. After his motion for reconsideration was denied, Navera filed the present petition for certiorari disputing the jurisdiction of the court a quo.

It is alleged by the municipality of Ligao that in the course of the construction or repair of Navera street of said municipality it was ascertained by a duly licensed surveyor that Lot No. 2793-A of the cadastral survey of Ligao has encroached upon said street by depriving the street of an area amounting to 123 square meters which was erroneously included in Lot No. 2793-A now covered by Transfer Certificate of Title No. T-9304 issued in the name of Godofredo Navera. Hence, the municipality prays for the correction of such error in the technical description of the lot, as well as in the certificate of title, with a view to excluding therefrom the portion of 123 square meters erroneously included therein.

The court a quo, over the objection of Navera, granted the petition even if the same was filed under Section 112 of Act No. 496. The court predicates its ruling upon the following rationale:

"It is a rule of law that lands brought under the operation of the Torrens System are deemed relieved from all claims and encumbrances not appearing on the title. However, the law excepts certain rights and liabilities from the rule, and there are certain burdens on the lands registered which continue to exist and remain in force, although not noted on the title, by express provisions of Section 39 of Act No. 496, as amended. Among the

burdens on the land registered which continue to exist, pursuant to said Section 39, is 'any public highway, way, private way established by law, or any Government irrigation canal or lateral thereof, where the certificate of title does not state that the boundaries of such highway, way, or irrigation canal or lateral thereof, have been determined.' The principle involved here is that, if a person obtains a title under the Torrens System which includes by mistake or oversight a land which cannot be registered, he does not by virtue of such certificate alone become the owner of the land illegally included therein. In the case of *Ledesma vs. Municipality of Iloilo*, 49 Phil., 769, the Supreme Court laid down the doctrine that 'the inclusion of public highways in the certificate of title under the Torrens System does not thereby give to the holder of such certificate said public highways.'"

Petitioner Navera does not agree with this ruling, invoking in his favor what we stated in a recent case to the effect that, "the law authorizes only alterations which do not impair rights recorded in the decree, or alterations which, if they do not prejudice such rights, are consented to by all parties concerned, or alterations to correct obvious mistakes, without opening the original decree of registration" (*Director of Lands vs. Register of Deeds*, 92 Phil., 826; 49 Off. Gaz. (3) 935). Navera contends that the purpose of the instant petition is not merely to correct a clerical error but to reopen the original decree of registration which was issued in 1937, and this description in order that the portion erroneously included may be returned to the municipality of Ligao. In effect, therefore, the petition does not seek merely the correction of a mistake or error but the return or re conveyance of a portion of a registered property to respondent. This cannot be done without opening the original decree of registration.

The theory entertained by the court a quo that if the portion to be segregated was really erroneously included in the title issued to petitioner because it is part of the Natera street which belongs to the municipality of Ligao that portion may be excluded under Section 112 of Act 496 because under the law[1] any public highway, even if noted on a title, is deemed excluded therefrom as a legal lien or encumbrance, is in our opinion correct. This is upon the principle that a person who obtains a title which includes by mistake, a land which cannot legally be registered does not by virtue of such inclusion become the owner of the land erroneously included therein.[2] But this theory only holds true if there is no dispute that the portion to be excluded is really part of a public highway. This principle only applies if there is unanimity as to the issue of fact involved.

Here said unanimity is lacking. The claim of the municipality that an error has been committed in the survey of the lot recorded in respondent's name by including a portion of the Natera street is not agreed to by petitioner. In fact, he claims that that is a question of fact that needs to be proven because it is controversial. There being dissension as to an important question of fact, the petition cannot be granted under Section 112 of Act No. 496.

"We are of the opinion that the lower court did not err in finding that it lacks jurisdiction to entertain the present petition for the simple reason that it involves a controversial issue which takes this case out of the scope of Section 112 of Act No. 496.

While this section, among other things, authorizes a person in interest to ask the court for any erasure, alteration, or amendment of a certificate of title 'upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased', and apparently the petition comes under its scope, such relief can only be granted if there is unanimity among the parties, or 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. * * *" (*Tanganan, et al. vs. Republic of the Philippines*, G. R. No. L-5545, December 29, 1953; See also *Jimenez vs. De Castro*, 40 Off. Gaz. No. 3, 1st Supp. p. 80; *Government of Philippines vs. Jalandoni*, 44 Off. Gaz., 1837)

Wherefore, petition is granted. The order of respondent court dated March 8, 1961, as well as its order dated

March 25, 1961, are hereby set aside. No costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Section 39, Act 496.

[2] Ledesma vs. Municipality of Iloilo, 49 Phil., 769.

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