

HEIRS OF THE LATE PEDRO PINOTE, REPRESENTED BY HIS CHILDREN, RUFINA PINOTE-AYING, ANTONINA PINOTE--SILAWAN, RAMONA PINOTE VDA. DE GUOD, AND JULIAN PINOTE, PETITIONERS, VS. HON. ...

G.R. No. 56694. July 02, 1990

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This special civil action of certiorari and mandamus was filed by the heirs of Pedro Pinote to compel respondent Judge Ceferino E. Dulay of the Court of First Instance of Cebu at Lapu-Lapu City to give due course to their appeal from his order dated June 7, 1979, granting the private respondent's petition for reconstitution of the title of Lot 2381 of the Opon Cadastre.

On September 30, 1978, Francisco P. Otto, representing his mother Petra Pinote, filed in the Court of First Instance (now Regional Trial Court) of Cebu, Branch XVI, at Lapu-Lapu City, a verified petition for reconstitution of the original certificate of title to Lot 2381 of the Opon Cadastre, which, as shown by a certified copy of the Municipal Index of Decrees (Annex A of the petition), was supposedly adjudicated to Saturnino, Juana, Irineo, Pedro, and Petronilo, all surnamed Pinote, under Decree No. 230607 dated May 7, 1934 in Cadastral Case No. 20, LRC Rec. No. 1004. The petition alleged that the original, as well as owner's duplicate certificate of title, were burned in the Opon municipal building during World War II, and the same could not be located despite diligent search; that there were no annotations or liens and encumbrances on the title affecting the same; that no deed or instrument affecting the property had been presented for registration; and that, based on the plans and technical description marked as Annexes B and C, the area, location, and boundaries of Lot 2381 are as follows:

"On the SE., by Lot 2383-Vicente Tunacao; and by Lot 2382-Margarito Tunacao; and also by Lot 2377-Maximo Patalingjug and Lot 2377-Joaquin Patalingjug; on the SW. and NW., by Lot 2380-General Milling Corporation; on the NE., by Lot 2386-Antonio Patalinghug; on the SE. E. and NE., by Lot 2385-General Milling Corporation; and on the SE., by Lot 2384-Escolastico Tunacao, all of Barrio Pusok, Lapu-Lapu City." (p. 9, Rollo.)*

By an order dated November 6, 1978, the court set the case for hearing on February 22, 1979 at 8:30 A.M. A copy of the notice of hearing was ordered to be published in the Official Gazette, furnished to all the adjoining owners, and posted by the Sheriff at the main entrances of the Provincial Capitol Building, the City Hall, and the Public Market of Lapu-Lapu City, at least 30 days prior to the date of hearing. The court also ordered copies of the notice and order to be sent to the Registers of Deeds of Lapu-Lapu City and Cebu, the Director of Lands, and the Commissioner of Land Registration, directing them to show cause, if any, why the petition may not be granted.

It does not appear, however, that notices were sent to each of the registered co-owners - Saturnino, Juana, Irineo, Pedro and Petronilo, all surnamed Pinote, or their heirs, so that they could have been heard on the petition.

As there was no opposition to the petition when it was called for hearing, the lower court commissioned its Clerk of Court to receive the evidence.

Based on the Commissioner's Report, as well as the oral and documentary evidence submitted by Francisco Otto in support of his petition, including a supposed abstract of the decision of the cadastral court (Expediente Cat. No. 20, Record Cat. 1004) dated January 15, 1930, which reads:

"Lote No. 2381. - A favor de cada uno de los cinco hermanos Pinoti, llamados Saturnino, casado con Maria Igot, Juana, Irineo, Petra y Petronilo, solteros y de 20 y 17 anos, respectivamente, los dos ultimos.

"ASI SE ORDENA." (Underscoring supplied; p. 62, Rollo)

the Court issued an order on June 7, 1979, directing the Register of Deeds of Lapu-Lapu City to reconstitute the original certificate of title of Lot 2381 of the Opon Cadastre, upon payment of the corresponding fees, in the names of SATURNINO PINOTE, married to Maria Igot, JUANA, IRINEO, PETRA (not Pedro) and PETRONILO, all surnamed Pinote (p. 11, Rollo). The court relied on the supposed abstract of the decision of the cadastral court (Exh. E), the technical descriptions, plan and report of the Land Registration Commission (Exhs. F and G) which are not found in the records before us.

Pursuant to the court's order, Original Certificate of Title No. RO-2355 of the Register of Deeds of Lapu-Lapu City was issued in the names of the alleged brothers and sisters, Saturnino Pinote married to Maria Igot, Juana, Irineo, Petra (not Pedro) and Petronilo, all surnamed Pinote.

On October 1, 1979, Atty. Porfirio Ellescas, as alleged counsel for the heirs of Pedro, Juana and Saturnino Pinote, supposedly all deceased, filed a motion for reconsideration of the court's order, and sought the re-opening of the proceedings and the rectification of the June 7, 1979 order, for, while Otto's main petition for reconstitution based on the Municipal Index of Decrees, alleged that Lot 2381 was decreed in the names of Irineo, Juana, Saturnino, Pedro, and Petronilo, all surnamed Pinote, the court's order of June 7, 1979 ordered the reconstitution of the title in the names of Saturnino, Juana, Irineo, Petra (instead of Pedro) and Petronilo, all surnamed Pinote. The heirs of Pedro Pinote claimed that they "learned of the error" only on September 27, 1979 through their counsel, who made the inquiry and obtained a copy of the court order.

A copy of the motion for reconsideration was received by Attorney Ramon Codilla, Otto's counsel, on Oct. 5, 1979 (p. 17, Rollo). The hearing of the motion was set on Nov. 14, 1979 at 8:30 A.M. with notice to Otto and Atty. Codilla (p. 18, Rollo). Because of a conflict in his trial calendar, Atty. Ellescas informed the court that he would not be able to attend the hearing (p. 19, Rollo). Only Atty. Codilla appeared at the hearing on Nov. 14, 1979. He was ordered by the court to submit a photocopy of OCT No. RO-2355 which he complied with.

On December 2, 1979, the court issued an order denying the motion for reconsideration on the ground that:

"x x x Annex 'A' of the petition for reconstitution of title wherein Lot 2381 of the Opon Cadastre was allegedly decreed in the names of Irineo, Juana, Saturnino, Pedro and Petronilo, all surnamed Pinote. During the hearing of this petition, no opposition was registered thereto and the evidence adduced by the petitioner shows clearly that an original certificate of title covering subject lot was issued in favor of Saturnino, Juana, Irineo, Petra, and Petronilo, all surnamed Pinote, co-owners and brothers and sisters; that the original, as well as the owners' duplicate, was burned in the Opon municipal building during the last war; that there were no annotations on this title affecting the same; that the so-called index of decree showing that Pedro Pinote is one of the co-owners is erroneous and it should instead read as 'Petra' since they are the brothers and sisters; and that this fact is also reflected in the extract of the decision of the cadastral court dated January 15, 1930 which reads:

" 'Lote No. 2381. - A favor de cada uno de los cinco hermanos Pinoti, llamados Saturnino, casado con Maria Igot,

Juana, Irineo, Petra y Petronilo, solteros y de 20 y 17 anos, respectivamente, los dos ultimos.'

"Under Republic Act No. 26, a petition for the reconstitution of a lost or destroyed original certificate of title for registered land may be filed with the Court of First Instance 'by the registered owner, his assigns or any person having an interest in the property' from any of the sources enumerated therein, and in accordance with the procedure outlined in the same law. Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order: (1) owner's duplicate certificate; (2) mortgagee's or lessee's duplicate certificate or co-owner's copy; (3) a certified copy of the certificate of title previously issued by the Register of Deeds or by a legal custodian thereof; (4) 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; (5) 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 (6) any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title. The index of decree which mentioned 'Pedro Pinote' is neither controlling nor conclusive as it is not an 'authenticated copy of the decree of registration pursuant to which the original certificate of title was issued.' Accordingly, the Court is justified in granting this petition on the bases of the decision of the cadastral court which is accompanied by the duly approved plan and technical description of the property" (Underscoring ours; pp. 21-23, Rollo.)

On January 2, 1980, the heirs of the late Pedro Pinote, namely, Rufina-Pinote-Aying, Antonina Pinote--Silawan, Ramona Pinote Vda. de Guod and Julian Pinote, filed their notice of appeal (p. 24, Rollo). On January 4, 1980, they filed an urgent ex parte motion for extension of time to file record on appeal (p. 25, Rollo). The record on appeal was filed on January 9, 1980, and a copy was sent to the private respondent by registered mail on the same date (p. 26, Rollo).

On May 10, 1980, the court denied due course to the appeal on the ground of tardiness as the petitioners' motion for reconsideration, which the court declared to be pro forma, did not suspend the finality of the court's June 7, 1979 order.

"The issue is: Has the appeal been perfected on time? We hold the contrary. Admittedly, they received a copy of the Order dated June 7, 1979 on September 27, 1979; hence, they had until October 27, 1979 within which to perfect their appeal. Instead, they opted to file a motion for reconsideration on October 1, 1979 which is merely pro forma. The ground alleged in the motion for reconsideration is the same ground for a new trial under Section 1 (c), Rule 37 of the new Rules of Court. This being so, the Court finds and so holds that their motion for reconsideration failed to point out specifically the findings or conclusions of the judgment which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions: hence, it shall be treated as a motion pro forma intended merely to delay the proceedings and it shall not interrupt or suspend the period of time for the perfection of an appeal. And since the period to appeal had long expired, the parties herein have lost their right to appeal from the Order of June 7, 1979." (Emphasis ours; pp. 29-30, Rollo.)

Hence, this petition for mandamus and/or certiorari filed by the heirs of Pedro Pinote praying that respondent court be ordered to give due course to their appeal or to amend the order of June 7, 1979, by striking out Petra and putting in Pedro instead as one of the co-owners of Lot 2381.

The only issues in this case are:

- (1) whether the petitioners' appeal is timely; and
- (2) whether the reconstitution proceedings should be reopened and the order of reconstitution dated June 7, 1979 should be rectified or amended.

After a careful examination of the sparse records before us, we find merit in the petition for certiorari and mandamus. First, because the petitioners' appeal was not tardy. Their motion for reconsideration of the order dated June 7, 1979 was not pro forma (Annex D, p. 14, Rollo). It invited the court's attention to a substantial variance between the petition for reconstitution and the court's order of reconstitution, for while the unopposed petition alleged that the registered co-owners of Lot 2381 were Saturnino, Juana, Irineo, Pedro and Petronilo, all surnamed Pinote, as evidenced by the entry in the Municipal Index of Decrees, the Order of Reconstitution dated June 7, 1979, on the other hand, identified the co-owners as "Saturnino Pinote, married to Maria Igot, Juana, Irineo, Petra and Petronilo, all surnamed Pinote x x x." The movants prayed that an order be issued for the reopening of the reconstitution proceeding and that the court's order of June 7, 1979 be rectified "to change the name of Petra to that of Pedro Pinote" (p. 14, Rollo).

The error adverted to in the motion for reconsideration is substantial for it affects the participation and interest of Pedro Pinote (or his heirs) in Lot No. 2381, an interest that appeared in the petition for reconstitution and in the notice of hearing issued by the court, but which disappeared from the court's order of reconstitution dated June 7, 1979, having been replaced by "Petra Pinote" instead. The trial court issued a three-page-single-spaced order, disposing of the motion for reconsideration. That so much argument was lavished on the denial of the motion proves that it was not pro forma or merely dilatory.

The motion for reconsideration was timely. The petitioners had not been separately notified of the reconstitution proceedings except by constructive notice through the published notice of hearing. They discovered the assailed order dated June 7, 1979 on September 27, 1979, through Atty. Ellescas. They had up to October 27, 1979 to either file a motion for reconsideration or appeal. They filed a motion for reconsideration on October 1, 1979 after only four (4) days of the 30-day appeal period had elapsed, so, they had 26 days left to appeal. On December 11, 1979, they received the court's order denying their motion for reconsideration (p. 23, Rollo). They filed a notice of appeal, cash appeal bond and a motion for extension of time to file a record on appeal on January 4, 1980 or 24 days later, with two (2) or more days of the appeal period to spare. Their record on appeal was actually filed on January 8, 1980, within the 10-day extension which they sought from the court (p. 29, Rollo). Clearly, their appeal was seasonably filed.

But apart from the question of whether their appeal was timely or not, the more important issue is the validity of the order of reconstitution. As the petition for reconstitution of title was a proceeding in rem, compliance with the requirements of R.A. 26 is a condition sine qua non for the conferment of jurisdiction on the court taking cognizance of the petition. Considering that both the petition and the court's notice of hearing, referred to the reconstitution of the title of Lot 2381 in the names of the registered co-owners, Saturnino Pinote married to Maria Igot, Juana, Irineo, Pedro and Petronilo, all surnamed Pinote, the cadastral court had jurisdiction only to grant or deny the prayer of the petition as published in the notice of hearing. The court could not receive evidence proving that Petra Pinote, instead of Pedro, is a registered co-owner of Lot 2381. The reconstitution or reconstruction of a certificate of title literally and within the meaning of Republic Act No. 26 denotes restoration of the instrument which is supposed to have been lost or destroyed in its original form and condition. The purpose of the reconstitution of any document, book or record is to have the same reproduced, after observing the procedure prescribed by law, in the same form they were when the loss or destruction occurred. Hence, in *Bunagan, et al. vs. CFI of Cebu, et al.*, 97 SCRA 72, where the certificate of title was decreed in the names of "Antonio Ompad and Dionisia Icong," the reconstitution of the title in the names of "spouses Antonio Ompad and Dionisia Icong" was held to be "a material change that cannot be authorized."

The jurisdiction of the cadastral court is hedged in by the four walls of the petition and the published notice of hearing which define the subject matter of the petition. If the court oversteps those borders, it acts without or in

excess of its jurisdiction in the case.

On the basis of the allegations of the petition and the published notice of hearing, the heirs of Pedro Pinote had no reason to oppose the petition for reconstitution for the rights and interest in Lot 2381 of their ancestor, Pedro Pinote, were not adversely affected by the petition. It was only when Pedro's name (and in effect, his interest in Lot 2381) disappeared from the court's order of reconstitution that his heirs had cause to rise in arms as it were, and ask for the reopening of the case.

There is no gainsaying the need for courts to proceed with extreme caution in proceedings for reconstitution of titles to land under R.A. 26. Experience has shown that this proceeding has many times been misused as a means of divesting a property owner of the title to his property. Through fraudulent reconstitution proceedings, he wakes up one day to discover that his certificate of title has been cancelled and replaced by a reconstituted title in someone else's name. Courts, therefore, should not only require strict compliance with the requirements of R.A. 26 but, in addition, should ascertain the identity of every person who files a petition for reconstitution of title to land. If the petition is filed by someone other than the registered owner, the court should spare no effort to assure itself of the authenticity and due execution of the petitioner's authority to institute the proceeding.

It should avoid being unwittingly used as a tool of swindlers and impostors in robbing someone of his title.

It does not appear that the above precautions had been taken in this case. We note that:

- (1) The registered owners (or their heirs) had not been individually notified of the filing of Otto's petition for reconstitution.
- (2) His authority, if any, and that of Atty. Ramon Codilla, to represent all the registered co-owners of Lot 2381 in the reconstitution proceeding, does not appear to have been investigated by the court.
- (3) It does not appear that the court verified Atty. Porfirio Ellescas' authority to appear as counsel for the movants-intervenors, Pedro, Juana and Saturnino Pinote (who are also supposed to be represented by Atty. Codilla), and their heirs.
- (4) Neither did it ascertain the identities of the heirs of Pedro, Saturnino and Juana who filed the motion to reopen the reconstitution proceedings.
- (5) We are intrigued why the heirs of Juana and Saturnino Pinote, through Atty. Ellescas, asked for reconsideration of the court's order dated June 7, 1979 since their interests in Lot 2381 were not adversely affected by the court's order dated June 7, 1979.
- (6) It does not appear that the court carefully ascertained the genuineness of the abstract of the decision of the cadastral court (which the petitioners alleged to be uncertified).
- (7) Ascertaining which is correct or wrong: the abstract of the decree, or, the Municipal Index of Decrees - calls for the reopening of the reconstitution proceeding and the careful examination of all available evidence as to who are the true registered co-owners of Lot 2381, for the Court may have unknowingly changed the ownership of Lot 2381 by vesting title in a stranger or impostor.

WHEREFORE, the petition for certiorari is granted. The orders dated June 27, 1979, December 2, 1979 and May 10, 1980 in Cad. Case No. 20, LRC Rec. No. 1004, Lot No. 2381, Opon Cadastre, are hereby annulled and set aside for having been issued without jurisdiction. The respondent court is ordered to reopen the proceeding for reconstitution of the title of Lot 2381, with due notice to each of the registered co-owners, the adjoining property owners, and others who are required by law to be notified. They should be separately furnished by respondent Francisco P. Otto, at their respective residential addresses, with copies of the petition and its annexes. The petitioners herein should be allowed to intervene in the proceeding in order that their or their predecessors'

interest, if any, may be heard. This decision is immediately executory. No costs.

SO ORDERED.

Narvasa, Acting C. J., Cruz, Gancayco, and Medialdea, JJ., concur.

* There is no statement of the area of Lot 2381.

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