

FRUCTUOSO AGUILAR, CONSTANCIA AGUILAR, DELFIN AGUILAR, RUFINA AGUILAR, CEFERINO AGUILAR, CIPRIANO AGUILAR, LUCIA AGUILAR, AND FILOMENA AGUILAR, PETITIONERS, VS. HONORABLE ELEUTE...

G.R. No. 56874. November 06, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to annul certain orders of the respondent judge in the light of the facts herein narrated.

Fructuoso, Constancia, Delfin, Rufina, Ceferino, Cipriano, Lucia and Filomena all surnamed Aguilar are the petitioners herein. They are the legitimate children of Tomas Aguilar now deceased. The parents of Tomas were Miguel and Isidra Aguilar who owned Lot No. 2345 of the Tanjay [Negros Oriental] Cadastre. Miguel and Isidra sold a portion of Lot No. 2345 to the Central Azucarera de Bais. Thereafter, the spouses and the Central claimed their respective portions in Cadastral Case No. 12, G.L.R.O. Cad. Rec. No. 311 of Negros Oriental and on April 26, 1927, the cadastral court adjudicated the lot, in accordance with a division made by the Bureau of Lands as early as September 17, 1924, as follows: Lots 2345-A, 2345-C and 2345-D to the Aguilars and Lot 2345-B to the Central. Later the division was amended with the approval of the cadastral court on January 24, 1929, so that Lot 2345-A became Lot 5281, Lot 2345-B became Lot 5282, Lot 2345-C became Lot 5283, and Lot 2345-D became Lot 5284.

Pursuant to the decision of the cadastral court, Lots 5281, 5283 and 5284 were registered on May 21, 1929, in the name of the Aguilar spouses and Original Certificate of Title No. 8922 was issued to them. When the spouses died, Tomas Aguilar as the only heir, became the owner of the said lots and he was issued T.C.T. No. 968 which cancelled O.C.T. No. 8922, on December 9, 1932. And when Tomas died on March 10, 1978, he was succeeded by his children who are the petitioners herein.

This petition concerns Lot 5284 only. In a "Motion to Amend Technical Description of Lot No. 5284" dated May 3, 1974, which Maria G. Gimony filed in Cadastral Case No. 12, LRC Record No. 311, she prayed that, "The technical description of Lot 5284 of Tanjay Cadastre, covered new by Transfer Certificate of Title No. T-968, be cancelled and/or amended to technical description for Lot No. 2345-D, which is the true technical description for Lot No. 5284 of Tanjay Cadastre." Gimony claims that "Lot No. 2345-D became Lot No. 5284 and in the technical description thereto, the area is ONE THOUSAND FORTY-THREE (1,043) square meters, per amendment plan, Psd-1595-Amd., approved by the Director of Lands on January 27, 1933. How-ever, in the old and unamended technical description of said Lot No. 5284, the area of which is ONE THOUSAND ONE HUNDRED NINETY (1,190) square meters more or less. Hence, there is a difference of 147 square meters. This 147 square meters forms part of the property of herein private respondent, under Certificate of Title No. T-15107 of Tanjay Cadastre, Negros Oriental, of which respondent had been in possession since then up to the present."

According to the uncontroverted allegations of the petitioners:

"x x x. The aforesaid motion [to amend technical description of Lot 5284] was filed on May 6, 1974, and a notice thereof of its scheduled hearing was set on May 8, 1974. For reason of lack of notice and failure of respondent Tomas Aguilar to receive a copy of said motion, the latter likewise failed to be present during the hearing thereof, and taking advantage of the absence of her adversary movant, private respondent in this case, presented her evidence ex-parte. Nevertheless, in order not to be construed as having waived his right to have a day in court, said respondent Tomas Aguilar filed a 'MANIFESTATION' (ANNEX "H") dated May 9, 1974, asking the lower court a period of 10 days to file his opposition thereto. The lower court acting on said manifestation issued an ORDER (ANNEX "I") dated May 9, 1974, granting the request of respondent Tomas Aguilar but the evidence already presented by private respondent had not been set aside. In compliance with said ORDER respondent Tomas Aguilar filed an 'OPPOSITION TO AMEND TECHNICAL DESCRIPTION OF LOT 5284' (ANNEX "J") dated May 17, 1974. After the issues were joined an ORDER (ANNEX "K") dated May 29, 1974, was issued resetting the hearing of pending incidents to June 19, 1974. There-after, a subsequent ORDER (ANNEX "L") dated July 10, 1974, was issued fixing the hearing of said motion to July 31, 1974.

"Before the hearing of said motion (ANNEX "A") private respondent filed a 'SUPPLEMENTAL MOTION' (ANNEX "M") dated August 20, 1974, and another 'MOTION' (ANNEX "N") dated March 4, 1975, praying for an appointment of a Commissioner preferably a Geodetic Engineer to conduct a relocation survey of Lot No. 5284. On the basis of the later motion the lower court, inspite of lack of notice to Tomas Aguilar, issued an ORDER (ANNEX "O") dated March 12, 1975, appointing Geodetic Engineer Bonifacio Catarata as Commissioner who, incidentally, happened to have previous contractual relations with private respondent involving the relocations of her other parcels of land. He was the very surveyor whom private respondent hired to locate the existence of the alleged amended technical description (ANNEX "P") of Lot No. 5284 as shown on the bottom thereof marked as ANNEX "P-1", which she later used as evidence in her 'MOTION TO AMEND TECHNICAL DESCRIPTION OF LOT 5284'.

"It is definitely established in Transfer Certificate of Title No. 968 of Lot No. 5284 that its original certificate of title was issued on the 21st day of May, 1929. On the other hand the alleged amended technical description (ANNEX "P") of said lot indicates that the amendment survey of the same was approved on January 27, 1933, about 4 years after from the issuance of said Original Certificate of Title No. 8922 covering the lot aforementioned. The existence of said circumstances established that ANNEX "P" was obtained from a spurious source because it is highly irregular procedure for an amendment survey to be approved after title to the land had long been issued.

"Dissatisfied of the aforesaid ORDER (ANNEX "O") for denying him of his day in court, having received no notice of the hearing thereof and a copy of said motion, said respondent Tomas Aguilar filed a 'MOTION FOR RECONSIDERATION' (ANNEX "Q") dated April 14, 1975, and the same was denied in the ORDER (ANNEX "R") dated April 23, 1975. As a consequence of said denial, respondent Tomas Aguilar filed a 'SECOND MOTION FOR RECONSIDERATION' (ANNEX "S") dated June 25, 1975. Then on July 21, 1975, an ORDER (ANNEX "T") was issued giving 15 days to private respondent to file her opposition thereto. Said order was complied with by the latter when she filed an 'OPPOSITION TO RESPONDENT'S SECOND MOTION FOR RECONSIDERATION' (ANNEX "U") dated August 2, 1975. Subsequently, an ORDER (ANNEX "V") dated January 22, 1976, was issued denying respondent Tomas Aguilar's 'SECOND MOTION FOR RECONSIDERATION'.

"In order to implement the ORDER (ANNEX "O") appointing Geodetic Engineer Bonifacio Catarata as Commissioner, private respondent filed a 'MOTION FOR EXECUTION' (ANNEX "W") dated May 26, 1976, and the same was granted in pursuant to an ORDER (ANNEX "X") dated September 23, 1976. In compliance with said order the above named Commissioner conducted a relocation survey of Lot No. 5284 and after completion of his relocation work he submitted a 'COMMISSIONER'S REPORT' (ANNEX "Y") dated December 16, 1976, for approval.

"On January 4, 1977, private respondent filed a 'MOTION FOR EXECUTION OF THE COMMISSIONER'S REPORT' (ANNEX "Z").

"Considering, in his opinion, that the 'COMMISSIONER'S REPORT' appears to be inconsistent with the facts established in the records of the aforesaid cadastral proceedings, as well as, the existing conditions obtaining on the parcel in controversy, respondent Tomas Aguilar filed his 'OPPOSITION TO COMMISSIONER'S REPORT' (ANNEX "A-1") dated February 28, 1977, and a 'SUPPLEMENT TO OPPOSITION TO COMMISSIONER'S REPORT' (ANNEX "B-1") dated April 26, 1977, both were denied in an ORDER (ANNEX "C-1") dated May 25, 1977, and approving the 'COMMISSIONER'S REPORT'. Respondent Tomas Aguilar, as his only and last remedy available under the ordinary course of law, to protect and save his property from being adjudicated to private respondent without fair trial, filed a 'MOTION FOR RECONSIDERATION' (ANNEX "D-1") dated June 30, 1977, to the ORDER (ANNEX "C-1") approving the 'COMMISSIONER'S REPORT'.

"However, during the pendency of the proceedings in connection with private respondent's 'MOTION TO AMEND TECHNICAL DESCRIPTION OF LOT 5284', respondent Tomas Aguilar died on March 10, 1978, and by reason of his death his counsel in order to give notice to the lower court of such fact, filed a 'MANIFESTATION' (ANNEX "E-1") dated October 18, 1978. Upon receipt of a copy of said manifestation, private respondent filed a 'COUNTER-MANIFESTATION AND OPPOSITION' (ANNEX "F-1") dated December 29, 1978. As a rejoinder thereto counsel for respondent Tomas Aguilar filed a 'REPLY TO MOVANT'S COUNTER-MANIFESTATION AND OPPOSITION' (ANNEX "G-1") dated February 12, 1979.

"Before the resolution of said incidents an ORDER (ANNEX "H-1") dated December 22, 1980, was issued granting a writ of execution to the 'COMMISSIONER'S REPORT'. Another ORDER (ANNEX "I-1") dated March 17, 1981, directing the Register of Deeds of Negros Oriental, to cancel Original Certificate of Title No. 8922 or Transfer Certificate of Title No. 968 and issue a new transfer certificate of title to Lot No. 5284, was issued in pursuant to a 'MOTION' (ANNEX "J-1") filed by private respondent dated March 11, 1981, which the petitioners as successors-in-interest of the late Tomas Aguilar had not been furnished a copy thereof."

The pivotal question in this case is whether or not the technical description of a registered parcel of land can be amended so as to reduce its area by a mere motion in the original cadastral proceedings long after the decree of registration had been entered. It is to be noted that Lot 5284 was originally registered as early as May 21, 1929, whereas the motion to amend was filed on May 6, 1974, after the lapse of 45 years on the basis of an amendment survey said to have been approved on January 27, 1933, or about four years after the issuance of the OCT. It is to be noted also that a Court of First Instance acting as a land registration court has but limited jurisdiction.

The private respondent does not indicate the statutory basis to support the procedure she has adopted namely: a motion in the original cadastral proceedings, for the purpose of amending the technical description of Lot 5284. In fact, she has disclaimed the use of Sec. 112 of Act No. 496 which allows, upon court order, an erasure, alteration, or amendment to be made on the registration book after the entry of the certificate of title and it is well she does for said section specifically denies to the court of land registration "authority to open the original decree of registration."

Private respondent states "that the Court of First Instance acting as a cadastral court may correct the technical description in the Certificate of Title if the boundaries of the land can be determined. (Domingo vs. Santos, 55 Phil. 361, 373-374 - cited in the Philippines Torrens System by Ponce, 1964 Ed., at p. 206)." We have read both the case and the book and neither supports the statement aforequoted more specifically that a Court of First Instance acting as a cadastral court has the power attributed to it. Domingo was an ordinary civil action to recover a piece of land which had been registered under Act No. 496. And this is what Ponce says in his cited book: "If the boundaries of the land can be determined, the technical description in the certificate of title may be corrected

without cancelling the decree. To nullify and cancel final decrees by reason of faulty technical description would lead to chaos (*Domingo vs. Santos*, 55 Phil. 361, 373-4)." (*Ponce*, op. cit.)

The jurisprudence in point is *Cuyugan, et al. vs. Sy Quia*, 24 Phil. 567 [1913] where this Court speaking through Justice Moreland said:

"Moreover, contests arising over the location of division lines are actions in personam and must be tried in the ordinary courts of law and not in the Court of Land Registration. They are actions involving the title to real estate, damages for illegal detention, for the cutting of timber, or the taking of crops. Sometimes they are for ejectment and sometimes for trespass. After the land has been registered the Court of Land Registration ceases to have jurisdiction over it for any purpose and it returns to the jurisdiction of the ordinary courts of law of the Islands for all subsequent purposes. The only authority remaining in the Court of Land Registration after its decree becomes final is that given to it by section 112 of Act No. 496. That section does not convey authority to conduct a proceeding like the present or to take cognizance in any way of disputes subsequently arising between adjoining owners and owners of the land registered."

WHEREFORE, the petition is granted and all proceedings in the court a quo in connection with the Motion to Amend Technical Description of Lot 5284 are hereby annulled and set aside. Costs against the private respondent.

SO ORDERED.

Barredo, Concepcion, Jr., and De Castro, JJ., concur.

Aquino, J., see concurrence.

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CONCURRING OPINION

AQUINO, J.:

I concur. Maria G. Gimony (Maria Aguilar) is the owner of Lot No. 2360-A located at Barrio Novallas, Tanjay, Negros Occidental with an area of 14,054 square meters as shown in TCT No. T-15107.

Near that lot is Lot 5284 (formerly Lot 2345-D) with an area of 1,190 square meters as shown in TCT No. T-968. It is registered in the names of Fructuoso, Constancia, Delfin Rufina, Ceferino, Cipriano, Lucia and Filomena, all surnamed Aguilar (the children of the late Tomas Aguilar), as shown in TCT No. 968.

Lot 5284 used to have an area of 1,043 square meters. But when a portion of the creek (Sapang Nagsala) separating it from Lot 2360-A dried up, the dried up portion with an area of 147 square meters was claimed by Tomas Aguilar and so the area of Lot 5284 was increased to 1,190 square meters.

Maria G. Gimony in her "motion" dated May 3, 1974 filed in the cadastral proceeding for Lot No. 5284 prayed that the technical description of Lot 5284 be corrected so as to reflect its original area of 1,043 square meters. She claimed to be entitled to the 147 square meters as part of her Lot 2360-A. She alleged that she had been in possession of that portion and that Tomas Aguilar occupied the same, thus encroaching on her lot.

Tomas Aguilar opposed that petition on the ground that the lower court, as a land registration court, has no jurisdiction to determine the ownership of that contested portion of 147 square meters.

The lower court designated a geodetic engineer, Bonifacio Catarata, as commissioner to conduct a relocation survey of Lot 5284 so as to ascertain its exact area and boundaries.

In the sketch plan prepared by Catarata, it appears that the 147 square-meter portion in question is a part of Lot 2360-A so that there is an overlapping between that lot and Lot 5284.

The petitioners objected to the report of Catarata. Judge Francisco H. Ledesma approved it in his order of May 25, 1977. Judge Eleuterio E. Chiu in his order of December 22, 1980 granted Gimony's motion for execution of the commissioner's report.

Judge Chiu in his order of March 17, 1981 directed the register of deeds to cancel TCT No. 968 and issue a new title containing the corrected technical description of Lot 5284 with an area of 1,043 square meters. That order was assailed in the petition for certiorari filed by the petitioners in this Court on May 11, 1981.

I concur in the opinion that the lower court had no jurisdiction to entertain Gimony's "motion" to correct the technical description of Lot 5284. Hence, all the proceedings in the lower court should be set aside. Gimony's remedy is an ordinary action to settle the ownership of the disputed 147 square-meter portion.

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