

ROGELIO ZUÑIGA, PETITIONER, VS. HON. ALFIN S. VICENCIO, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF MASBATE, RESPONDENT.

G.R. No. 57926. September 14, 1987

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is a petition for review on certiorari^[1] of an order of the Honorable Judge Alfin S. Vicencio of the then Court of First Instance of Masbate in Special Proceeding No. 2800, entitled, "In re: Petition for Reconstitution of Lost Title, Rogelio Zuniga, Petitioner," requiring the publication of the Notice of Hearing of the said case not only twice in the Official Gazette but also in a newspaper, or, more aptly, a tabloid, the "Sorsogon Newsweek."

The petition raises only a question of law. The following are the facts:

On September 20, 1978, the petitioner, Rogelio Zuniga filed a petition for the reconstitution of an Original Certificate of Title allegedly issued to one Fermin Almocera in 1933 by virtue of a homestead patent. According to the petitioner, the original copy of the title, which was on file in the Office of the Register of Deeds of the Province of Masbate, and the owner's duplicate certificate thereof, which was in the possession of the registered owner, had been lost or destroyed. Petitioner Zuniga further averred that he purchased the property covered by the lost Torrens certificate of title from one Irene S. Dolera who bought it earlier from the registered owner, Fermin Almocera.

After nearly three years, on July 6, 1981, the lower court through the respondent judge, finally came around to issuing a Notice of Hearing of the petition. The respondent Judge however, aside from requiring the publication of the notice twice in the Official Gazette, further ordered publication specifically in the Sorsogon Newsweek, a newspaper published in Bulan, Sorsogon. The petitioner objected to the publication in the Sorsogon Newsweek arguing that such publication is not required by law, and furthermore, it would only entail unnecessary expense, P700.00 to be exact, which he did not have. He added that the tabloid preferred by the respondent Judge had only a very limited circulation in Masbate. As a matter of fact, he represented that there are no copies of its issues for sale in the entire province of Masbate and "only those who have published matters therein are being furnished copies ..."^[2] Thus, he concluded, this requirement of publication was an expensive exercise in futility. Hence, he moved for a reconsideration of the court's order.^[3] The respondent Judge however, unconvinced by the petitioner's protestations, on July 20, 1981, denied the motion for reconsideration for lack of merit.^[4]

The petitioner then came straight up to us praying that the trial court's Notice of Hearing be set aside and a new one in accordance with Section 13 of Republic Act No. 26 in relation to Section 110 of Presidential Decree No. 1529 be issued.

On September 21, 1981, we gave due course to the petition and required the parties to submit simultaneous memoranda.^[5] The parties complied, the petitioner filing his Memorandum on November 9, 1981 while the respondent Judge submitted his on February 19, 1982.

The only issue that needs to be resolved in this petition is whether or not publication of the Notice of Hearing of the petition for the reconstitution of a lost or destroyed original of a Torrens certificate of title in a local newspaper is required by the law. The petitioner submits that such publication is not required. The respondent Judge, on the other hand, asserts otherwise. We find the petitioner's contention amply supported by Republic Act No. 26, "An Act Providing a Special Procedure for the Reconstitution of Torrens Certificate of Title Lost or Destroyed," approved on September 25, 1946. and Presidential Decree No. 1529, "Property Registration Decree," issued on June 11, 1978.

Section 13 of Republic Act No. 26, the earlier law on the subject, provides:

SEC. 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupant or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.

The respondent Judge's contention that Republic Act No. 26 has been repealed by P.D. No. 1529, the Property Registration Decree,[6] is not correct. True, Section 120 of P.D. No. 1529 provides that:

SEC. 120. Repealing clause. -- All laws, decrees, orders, rules and regulations, or parts thereof, in conflict or inconsistent with any of the provisions of this Decree are hereby repealed or modified accordingly.

Yet, we do not find Section 13 of Republic Act No. 26 inconsistent with the Property Registration Decree. On the contrary, the Decree explicitly restates by reference the applicability of Republic Act No. 26 to the judicial reconstitution of lost or destroyed Torrens titles, in this wise:

SEC. 110. Reconstitution of lost or destroyed original of Torrens title. -- Original copies of certificates of title lost or destroyed in the offices of Register of Deeds as well as liens and encumbrances affecting the lands covered by such titles shall be reconstituted judicially in accordance with the procedure prescribed in Republic Act No. 26 insofar as not inconsistent with this Decree. The procedure relative to administrative reconstitution of lost or destroyed certificate prescribed in said Act is hereby abrogated.

xxx xxx xxx

(Emphasis supplied.)

By and large, what Section 110 of P.D. No. 1529 abrogated in R.A. No. 26 is the latter's provisions on administrative reconstitution. The procedure on judicial reconstitution under R.A. No. 26, including Section 13 thereof, has not been repealed or modified, whether expressly or impliedly. That procedure remains unchanged and, therefore, still applies. Publication of the notice of the hearing of the petition in a newspaper is not required. Publication of the notice in two successive issues of the Official Gazette (with the required postings and the "notice by registered mail or otherwise") suffices.

The respondent Judge invokes Section 23 of Presidential Decree No. 1529. The invocation is fatally flawed simply because the law he relied upon is inapplicable to the case. Section 23 refers to the publication of the notice of the initial hearing of the application for the original registration of title to land in ordinary registration

proceedings and not to the publication of the notice of hearing of a petition for the reconstitution of a Torrens title which had been lost or destroyed. The pertinent part of the section insisted upon by the respondent Judge states:

SEC. 23. Notice of initial hearing, publication, etc. -- The court shall, within five days from filing of the application (for registration of title to land -- see Sec. 14), issue an order setting the date and hour of the initial hearing which shall not be earlier than forty-five days nor later than ninety days from the date of the order.

The public shall be given notice of the initial hearing of the application for land registration by means of (1) publication; (2) mailing; and (3) posting.

1. By publication. —

Upon receipt of the order of the court setting the time for initial hearing, the Commissioner of Land Registration shall cause a notice of initial hearing to be published once in the Official Gazette and once in a newspaper of general circulation in the Philippines: Provided, however, that the publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court. Said notice shall be addressed to all persons appearing to have an interest in the land, involved including the adjoining owners so far as known, and "to all whom it may concern". Said notice shall also require all persons concerned to appear in court at a certain date and time to show cause why the prayer of said application shall not be granted.

xxx xxx xxx [7]

It can thus be seen that had there been some circumspection on the part of the respondent Judge, this protracted controversy would have been obviated. Certainly, a little more study would have ended this case in the trial court.

Finally, the fear intimated by the respondent Judge that fake land titles might proliferate if petitions for reconstitution of lost or destroyed Torrens titles are not published in a newspaper of general circulation in addition to the publication in the Official Gazette and the required postings and mailing, is unfounded. Experience has taught us that hardly anybody reads the legal notices in newspapers, published as they are in fine prints and buried in inconspicuous parts of the inside pages. We also know that most of these so-called newspapers officially and indiscriminately authorized by the various courts for the publication of legal notices are fly-by-night tabloids with no appreciable circulation at all. This situation has become so anomalous as that the requirement for newspaper publication of notices of hearing has degenerated into a racket that has become a bane in the administration of justice. And this racket is doubly abhorrent because the rates, which, more often than not, are shared by some dishonest court personnel, are scandalously exorbitant, running into thousands of pesos for the publication of a simple notice of hearing, (in the instant case the charge was supposed to be P700.00), which many litigants can not afford. The Court can not countenance such perversion or the purpose of the publication of legal notices. To require publication without a clear legal basis would exacerbate the anomaly. It follows that where there is no specific legal provision or rule requiring publication, as there is none in this case, the Court will not require it.

WHEREFORE, the Order on the publication of the Notice of Hearing, dated July 8, 1981, in the Sorsogon Newsweek, and the Resolution, dated July 20, 1981, denying the Motion for Reconsideration filed by the petitioner, issued by the respondent Judge in Special Proceedings No. 2800, are hereby ANNULLED and SET ASIDE. The Presiding Judge of the Regional Trial Court in which the said proceeding is pending is hereby ORDERED to immediately issue another Notice of Hearing of the petition in accordance with the provisions of Section 13 of Republic Act No. 26, requiring publication only in two successive issues of the Official Gazette, plus the required postings and mailing, stating all the pertinent data specified in the said Section 13, in order to comply with the requirements of due process.

No costs.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras and Padilla, JJ., concur.

[1] Filed on August 20, 1981.

[2] Memorandum For The Petitioner, 1-2; Rollo, 14-15.

[3] Petition, 1-2; Rollo, 3-3-A.

[4] Id., 2; Rollo, 15.

[5] Rollo, 9.

[6] Memorandum of respondent, 2: Rollo, 26.

[7] Section 23 (1st part), P.D. No. 1529.

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