

ALFREDO CHING, PETITIONER, VS. THE HONORABLE COURT OF APPEALS & PEDRO ASEDILLO, RESPONDENTS.*G.R. No. 59731. January 11, 1990*

Ponente: PARAS, J.

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This is a petition for review on certiorari which seeks to nullify the decision of respondent Court of Appeals (penned by Hon. Rodolfo A. Nocon with the concurrence of Hon. Crisolito Pascual and Juan A. Sison) in CA-G.R. No. 12358-SP entitled *Alfredo Ching v. Hon. M. V. Romillo, et al.* which in effect affirmed the decision of the Court of First Instance of Rizal, now Regional Trial Court (penned by Judge Manuel V. Romillo, Jr. then District Judge, Branch XXVII Pasay City) granting ex-parte the cancellation of title registered in the name of Ching Leng in favor of Pedro Asedillo in Civil Case No. 6888-P entitled *Pedro Asedillo v. Ching Leng and/or Estate of Ching Leng*.

The facts as culled from the records disclose that:

In May 1960, Decree No. N-78716 was issued to spouses Maximo Nofuente and Dominga Lumandan in Land Registration Case No. N-2579 of the Court of First Instance of Rizal and Original Certificate of Title No. 2433 correspondingly given by the Register of Deeds for the Province of Rizal covering a parcel of land situated at Sitio of Kay-Biga, Barrio of San Dionisio, Municipality of Paranaque, Province of Rizal, with an area of 51,852 square meters (Exhibit "7", p. 80, CA Rollo).

In August 1960, 5/6 portion of the property was reconveyed by said spouses to Francisco, Regina, Perfecta, Constancio and Matilde all surnamed Nofuente and Transfer Certificate of Title No. 78633 was issued on August 10, 1960 accordingly (Exhibit "8", pp. 81 and 82, Ibid.).

By virtue of a sale to Ching Leng with postal address at No. 44 Libertad Street, Pasay City, Transfer Certificate of Title No. 91137 was issued on September 18, 1961 and T. C. T. No. 78633 was deemed cancelled. (Exhibit "5-2", pp. 76-77 and 83, Ibid.).

On October 19, 1965, Ching Leng died in Boston, Massachusetts, United States of America. His legitimate son Alfredo Ching filed with the Court of First Instance of Rizal (now RTC) Branch III, Pasay City a petition for administration of the estate of deceased Ching Leng docketed as Sp. Proc. No. 1956-P. Notice of hearing on the petition was duly published in the "Daily Mirror", a newspaper of general circulation on November 23 and 30 and December 7, 1965. No oppositors appeared at the hearing on December 16, 1965, consequently after presentation of evidence petitioner Alfredo Ching was appointed administrator of Ching Leng's estate on December 28, 1965 and letters of administration issued on January 3, 1966 (pp. 51-53, Rollo). The land covered by T. C. T. No. 91137 was among those included in the inventory submitted to the court (p. 75, Ibid.).

Thirteen (13) years after Ching Leng's death, a suit against him was commenced on December 27, 1978 by private respondent Pedro Asedillo with the Court First Instance of Rizal (now RTC), Branch XXVII, Pasay City docketed

as Civil Case No. 6888-P for reconveyance of the abovesaid property and cancellation of T.C.T. No. 91137 in his favor based on possession (p. 33, *Ibid.*). Ching Leng's last known address is No. 44 Libertad Street, Pasay City which appears on the face of T. C. T. No. 91137 (not No. 441 Libertad Street, Pasay City, as alleged in private respondent's complaint). (Order dated May 29, 1980, p. 55, *Ibid.*). An amended complaint was filed by private respondent against Ching Leng and/or Estate of Ching Leng on January 30, 1979 alleging "That on account of the fact that the defendant has been residing abroad up to the present, and it is not known whether the defendant is still alive or dead, he or his estate may be served by summons and other processes only by publication"; (p. 38, *Ibid.*). Summons by publication to Ching Leng and/or his estate was directed by the trial court in its order dated February 7, 1979. The summons and the complaint were published in the "Economic Monitor", a newspaper of general circulation in the province of Rizal including Pasay City on March 5, 12 and 19, 1979. Despite the lapse of the sixty (60) day period within which to answer defendant failed to file a responsive pleading and on motion of counsel for the private respondent, the court a quo in its order dated May 25, 1979, allowed the presentation of evidence ex-parte. A judgment by default was rendered on June 15, 1979, the decretal portion of which reads:

"WHEREFORE, finding plaintiff's causes of action in the complaint to be duly substantiated by the evidence, judgment is hereby rendered in favor of the plaintiff and against the defendant declaring the former (Pedro Asedillo) to be the true and absolute owner of the property covered by T.C.T. No. 91137; ordering the defendant to reconvey the said property in favor of the plaintiff; sentencing the defendant Ching Leng and/or the administrator of his estate to surrender to the Register of Deeds of the Province of Rizal the owner's copy of T.C.T. No. 91137 so that the same may be cancelled failing in which the said T.C.T. No. 91137 is hereby cancelled and the Register of Deeds of the Province of Rizal is hereby ordered to issue, in lieu thereof, a new transfer certificate of title over the said property in the name of the plaintiff Pedro Asedillo of legal age, and a resident of Estrella Street, Makati, Metro Manila, upon payment of the fees that may be required therefor, including the realty taxes due the Government.

"IT IS SO ORDERED." (pp. 42-44, *Ibid.*)

Said decision was likewise served by publication on July 2, 9 and 16, 1979 pursuant to Section 7 of Rule 13 of the Revised Rules of Court (CA Decision, pp. 83-84, *Ibid.*). The title over the property in the name of Ching Leng was cancelled and a new Transfer Certificate of Title was issued in favor of Pedro Asedillo (p. 77, CA Rollo) who subsequently sold the property to Villa Esperanza Development, Inc. on September 3, 1979 (pp. 125-126, *Ibid.*).

On October 29, 1979 petitioner Alfredo Ching learned of the abovestated decision. He filed a verified petition on November 10, 1979 to set it aside as null and void for lack of jurisdiction which was granted by the court on May 29, 1980 (penned by Hon. Florentino de la Pena, Vacation Judge, pp. 54-59, Rollo).

On motion of counsel for private respondent the said order of May 29, 1980 was reconsidered and set aside, the decision dated June 15, 1979 aforequoted reinstated in the order dated September 2, 1980. (pp. 60-63, *Ibid.*).

On October 30, 1980, petitioner filed a motion for reconsideration of the said latter order but the same was denied by the trial court on April 12, 1981 (pp. 77-79, *Ibid.*).

Petitioner filed an original petition for certiorari with the Court of Appeals but the same was dismissed on September 30, 1981. His motion for reconsideration was likewise denied on February 10, 1982 (pp. 81-90, *Ibid.*).

Private respondent Pedro Asedillo died on June 7, 1981 at Makati, Metro Manila during the pendency of the case with the Court of Appeals (p. 106, CA Rollo).

Hence, the instant petition.

Private respondent's comment was filed on June 1, 1982 (p. 117, *Ibid.*) in compliance with the resolution dated

April 26, 1982 (p. 109, Ibid.). Petitioner filed a reply to comment on June 18, 1982 (p. 159, Ibid.) and the Court gave due course to the petition in the resolution of June 28, 1982 (p. 191, Ibid.).

Petitioner raised the following:

ASSIGNMENTS OF ERROR

I

WHETHER OR NOT A DEAD MAN CHING LENG AND/OR HIS ESTATE MAY BE VALIDLY SERVED WITH SUMMONS AND DECISION BY PUBLICATION.

II

WHETHER OR NOT AN ACTION FOR RECONVEYANCE OF PROPERTY AND CANCELLATION OF TITLE IS IN PERSONAM, AND IF SO, WOULD A DEAD MAN AND/OR HIS ESTATE BE BOUND BY SERVICE OF SUMMONS AND DECISION BY PUBLICATION.

III

WHETHER OR NOT THE PROCEEDINGS FOR RECONVEYANCE AND CANCELLATION OF TITLE CAN BE HELD EX-PARTE.

IV

WHETHER OR NOT THE TRIAL COURT ACQUIRED JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES.

V

WHETHER OR NOT PRIVATE RESPONDENT IS GUILTY OF LACHES IN INSTITUTING THE ACTION FOR RECONVEYANCE AFTER THE LAPSE OF 19 YEARS FROM THE TIME THE DECREE OF REGISTRATION WAS ISSUED.

Petitioner's appeal hinges on whether or not the Court of Appeals has decided a question of substance in a way probably not in accord with law or with the applicable decisions of the Supreme Court.

Petitioner avers that an action for reconveyance and cancellation of title is in personam and the court a quo never acquired jurisdiction over the deceased Ching Leng and/or his estate by means of service of summons by publication in accordance with the ruling laid down in *Ang Lam v. Rosillosa et al.*, 86 Phil. 448 [1950].

On the other hand, private respondent argues that an action for cancellation of title is quasi in rem, for while the judgment that may be rendered therein is not strictly a judgment in rem, it fixes and settles the title to the property in controversy and to that extent partakes of the nature of the judgment in rem, hence, service of summons by publication may be allowed unto Ching Leng who on the face of the complaint was a non-resident of the Philippines in line with the doctrine enunciated in *Perkins v. Dizon*, 69 Phil. 186 [1939].

The petition is impressed with merit.

An action to redeem, or to recover title to or possession of, real property is not an action in rem or an action against the whole world, like a land registration proceeding or the probate of a will; it is an action in personam, so much so that a judgment therein is binding only upon the parties properly impleaded and duly heard or given an opportunity to be heard. Actions in personam and actions in rem differ in that the former are directed against specific persons and seek personal judgments, while the latter are directed against the thing or property or status

of a person and seek judgments with respect thereto as against the whole world. An action to recover a parcel of land is a real action but it is an action in personam, for it binds a particular individual only although it concerns the right to a tangible thing (*Ang Lam v. Rosillosa*, supra).

Private respondent's action for reconveyance and cancellation of title being in personam, the judgment in question is null and void for lack of jurisdiction over the person of the deceased defendant Ching Leng. Verily, the action was commenced thirteen (13) years after the latter's death. As ruled by this Court in *Dumlao v. Quality Plastic Products, Inc.* (70 SCRA 475 [1976]) the decision of the lower court insofar as the deceased is concerned, is void for lack of jurisdiction over his person. He was not, and he could not have been validly served with summons. He had no more civil personality. His juridical personality, that is fitness to be subject of legal relations, was lost through death (Arts. 37 and 42 Civil Code).

The same conclusion would still inevitably be reached notwithstanding joinder of Ching Leng's estate as co-defendant. It is a well-settled rule that an estate can sue or be sued through an executor or administrator in his representative capacity (21 Am. Jr. 872). Contrary to private respondent's claims, deceased Ching Leng is a resident of 44 Libertad Street, Pasay City as shown in his death certificate and T. C. T. No. 91137 and there is an on-going intestate proceedings in the same court, Branch III commenced in 1965, and notice of hearing thereof duly published in the same year. Such misleading and misstatement of facts demonstrate lack of candor on the part of private respondent and his counsel, which is censurable.

The complaint for cancellation of Ching Leng's Torrens Title must be filed in the original land registration case, RTC, Pasig, Rizal, sitting as a land registration court in accordance with Section 112 of the Land Registration Act (Act No. 496, as amended) not in CFI Pasay City in connection with, or as a mere incident in Civil Case No. 6888-P (*Estanislao v. Honrado*, 114 SCRA 748 [1982]).

Section 112 of the same law requires "notice to all parties in interest." Since Ching Leng was already in the other world when the summons was published he could not have been notified at all and the trial court never acquired jurisdiction over his person. The ex-parte proceedings for cancellation of title could not have been held (*Estanislao v. Honrado*, supra).

The cited case of *Perkins v. Dizon*, supra is inapplicable to the case at bar since petitioner Perkins was a non-resident defendant sued in Philippine courts and sought to be excluded from whatever interest she has in 52,874 shares of stocks with Benguet Consolidated Mining Company. The action being a quasi in rem, summons by publication satisfied the constitutional requirement of due process.

The petition to set aside the judgment for lack of jurisdiction should have been granted and the amended complaint of private respondent based on possession and filed only in 1978 dismissed outrightly. Ching Leng is an innocent purchaser for value as shown by the evidence adduced in his behalf by petitioner herein, tracing back the roots of his title since 1960, from the time the decree of registration was issued.

The sole remedy of the landowner whose property has been wrongfully or erroneously registered in another's name — after one year from the date of the decree — is not to set aside the decree, but respecting the decree as incontrovertible and no longer open to review, to bring an ordinary action in the ordinary court of justice for damages if the property has passed unto the hands of an innocent purchaser for value (*Sy, Sr. v. Intermediate Appellate Court*, G. R. No. 66742; *Teoville Development Corporation v. IAC, et al.*, G. R. No. 75011, June 16, 1988).

Failure to take steps to assert any rights over a disputed land for 19 years from the date of registration of title is fatal to the private respondent's cause of action on the ground of laches. Laches is the failure or neglect, for an

unreasonable length of time to do that which by exercising due diligence could or should have been done, earlier; it is negligence or omission to assert a right within a reasonable time warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it (*Bailon-Casilao v. Court of Appeals*, G. R. No. 78178, April 15, 1988; *Villamor v. Court of Appeals*, G. R. No. 41508, June 27, 1988).

The real purpose of the Torrens systems is to quiet title to land and to stop forever any question as to its legality. Once a title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting on the "mirador su casa", to avoid the possibility of losing his land (*National Grains Authority v. IAC*, 157 SCRA 388 [1988]).

A Torrens title is generally a conclusive evidence of the ownership of the land referred to therein (Section 49, Act 496). A strong presumption exists that Torrens titles are regularly issued and that they are valid. A Torrens title is incontrovertible against any "information possessoria" or title existing prior to the issuance thereof not annotated on the title (*Salamat Vda. de Medina v. Cruz*, G. R. No. 39272, May 4, 1988).

PREMISES CONSIDERED, (1) the instant petition is hereby GRANTED; (2) the appealed decision of the Court of Appeals is hereby REVERSED and SET ASIDE; (3) the trial court's decision dated June 15, 1979 and the Order dated September 2, 1980 reinstating the same are hereby declared NULL and VOID for lack of jurisdiction and (4) the complaint in Civil Case No. 6888-P is hereby DISMISSED.

SO ORDERED.

Melencio-Herrera, (Chairman), Sarmiento, and Regalado, JJ., concur.
Padilla, J., no part; was former counsel of Ching Leng.

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