

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. FLORENCIA MARASIGAN, AND HON. COURT OF APPEALS, RESPONDENTS.

G.R. No. 85515. June 06, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is an appeal by certiorari under Rule 45 of the Rules of Court to set aside the Decision of 29 August 1988[1] of the Court of Appeals in C.A.-G.R. CV No. 15163[2] and its Resolution of 18 October 1988[3] which, respectively, affirmed the Order of Branch 39 of the Regional Trial Court of Oriental Mindoro, Fourth Judicial Region, of 17 June 1987[4] granting the petition of private respondent for the reconstitution of the original and the owner's duplicate copies of a transfer certificate of title despite lack of service of notices to adjoining owners and the actual occupants of the land, and denied petitioner's motion for the reconsideration of the Decision.[5]

The issue in this petition is whether notices to adjoining owners and the actual occupants of the land are mandatory and jurisdictional in judicial reconstitution of certificates of title.

On 4 November 1986 private respondent, claiming to be one of the heirs of Epifania Alcano, registered owner of a parcel of land located in Canubing, Calapan, Oriental Mindoro, containing an area of 33,294 square meters, and covered by Transfer Certificate of Title No. T-66062 in the Registry of Deeds of Calapan, Oriental Mindoro, filed a petition for the reconstitution of "the original and duplicate copy (sic)" of the said Transfer Certificate of Title on the basis of the owner's duplicate copy.[6] She alleged therein that she is in possession "of the title subject matter of" the petition but she, however, did not allege the reason why she asked for the reconstitution.

In its Order of 4 November 1986 the trial court set the petition for hearing and required its publication in the Official Gazette, which was done. Required notices, except to the adjoining owners and the actual occupants of the land, were given.

Upon prior authority of the trial court, reception of private respondent's evidence was made by the OIC-Branch Clerk of Court. Thereafter, on 17 June 1987, the trial court handed down an Order[7] which made the following findings of facts:

"From the evidence adduced by the petitioner, it appears that she is one of the vendees of a certain parcel of land situated in Malamig, Calapan, Oriental Mindoro, containing an area of 33,294 square meters, embraced in and covered by Transfer Certificate of Title No. T-66062 and registered in the name of Epifania Alcano (Exh. "B") as evidenced by a document of sale executed by the registered owner (Exh. "I"). The original copy of said title which was usually kept in the Office of the Register of Deeds of this province was destroyed by reason of the fire which razed to the ground the entire Capitol Building then housing said office on August 12, 1977 (Exh. "C"). It appears further that there are no co-owner's, mortgagee's, lessee's duplicate copy of said certificate of title which had been previously issued by the Register of Deeds of this province; that the petitioner is in actual possession of the area of 16,647 square meters which was sold to her and that she is benefitting from the produce of the improvements existing on the area belonging to her."

and disquisition:

"Accordingly, finding the instant petition to be well-founded and there being no opposition to its approval, same is hereby granted. The Register of Deeds of this province is hereby directed to reconstitute the original and the owner's duplicate copies of Transfer Certificate of Title No. T-66062 in the name of the registered owners (sic) thirty days after receipt of this Order by the Register of Deeds of this province and the Commissioner of the Land Registration Commission, on the basis of the existing owner's duplicate copy thereof."

Petitioner herein, through the Office of the Solicitor General, appealed from said Order to the Court of Appeals and made the following assignment of errors:

"I. THE TRIAL COURT ERRED IN ACQUIRING JURISDICTION OVER THE INSTANT PETITION FOR RECONSTITUTION OF THE ORIGINAL AND THE OWNER'S DUPLICATE COPIES OF TCT NO. T-66062 WITHOUT THE REQUISITE SERVICE OF NOTICE OF HEARING TO THE ADJOINING OWNERS AND ACTUAL OCCUPANTS OF THE LAND AS REQUIRED BY SECTION 13 OF REPUBLIC ACT NO. 26.

II. THE TRIAL COURT ERRED IN GRANTING THE PETITION FOR RECONSTITUTION."[8]

The appeal was docketed as C.A.-G.R. CV No. 15163.

In support of the first assigned error, petitioner maintained that the requirement of Section 13 of R.A. No. 26 is not only mandatory but jurisdictional as held in *MWSS vs. Sison, et al.*, 124 SCRA 394.

In its Decision of 29 August 1988[9] respondent Court of Appeals brushed aside the arguments of petitioner and held that:

1) Section 13 of R.A. No. 26 which "requires the sending out of notices to the adjoining owners and actual occupants to vest jurisdiction," appears to have been "at least impliedly amended by Presidential Decree No. 1529" because it is inconsistent with Section 23 of said Decree which provides that in original registration cases publication of notices of initial hearing in the Official Gazette is sufficient to confer jurisdiction on the court. Section 110 of said Decree provides:

"SEC. 110. Reconstitution of lost or destroyed original of Torrens Title. - Original copies of certificates of title lost or destroyed in offices of Register of Deeds as well as liens and encumbrances affecting such titles shall be reconstituted judicially in accordance with the procedure prescribed in Republic Act No. 26 insofar as not inconsistent with this Decree." (emphasis supplied)

2) The *MWSS vs. Sison* case is not on all fours with the instant case for in the former both the original and the owner's duplicate copies of the certificate of title were claimed to be lost, unlike in the instant case where the duplicate copy is intact; it was not shown that the original copy in the custody of the Register of Deeds was destroyed; the copies of the titles alleged to have been lost were later found intact in the names of other persons; and, more importantly, the Petition was not published in the Official Gazette but in the *Manila Daily Bulletin*, unlike in the instant case.

3) The duty to send notices to adjoining owners and actual occupants is imposed upon the court, not the party filing the petition for reconstitution (herein private respondent); any lapse in regard thereto should not prejudice or injure the latter.

4) Finally, in the instant case, the private respondent cannot be blamed for the loss of the original copy of the transfer certificate of title; it was lost by reason of the burning of the Capitol Building; she should not, therefore, be put to trouble, anxiety and expenses.

Petitioner's motion to reconsider the Decision having been denied by the Court of Appeals in its Resolution of 18 October 1988, petitioner filed the instant petition on 22 December 1988 alleging therein that:

"a. The respondent Honorable Court of Appeals acted contrary to law when it did not consider that the trial court is without jurisdiction over the instant petition for reconstitution of the original owners (sic) duplicate copies of TCT No. 66062 as there is no requisite service of notice of hearing to the adjoining owners and actual occupants of the land as required by Section 13 of R. A. No. 26;

b. The respondent Honorable Court of Appeals acted contrary to law in granting the petition for reconstitution of the original and duplicate copies of TCT No. 66062."

In Our resolution of 16 January 1989,[10] We required the respondents to comment on the petition. Private respondent filed her comment on 10 February 1989.[11] She practically copied therein the questioned decision of respondent Court of Appeals.

In Our resolution of 15 March 1989 We gave due course to the petition and required the parties to submit simultaneously their respective memoranda, which petitioner complied with on 3 July 1989[12] and private respondent on 10 June 1989.[13]

The petition is impressed with merit.

The questioned Decision of 29 August 1988 and the Resolution of 18 October 1988 of respondent Court of Appeals, as well as the Order of Branch 39 of the Regional Trial Court of Oriental Mindoro of 17 June 1987, must be set aside.

Section 13 of R.A. No. 26 has not been altered, modified or amended. Since the requirement therein of service of notice of the initial hearing to the adjoining owners and the actual occupants of the land was not complied with in this case, the court below did not, therefore, acquire jurisdiction over the petition for the reconstitution of Transfer Certificate of Title No. 66062. Accordingly, the respondent Court of Appeals gravely erred in affirming the Order of the trial court granting the petition and in holding that said Section 13 has been "at least impliedly amended" by Section 23 in relation to Section 110 of P.D. No. 1529 which took effect on 11 June 1978.

In *Director of Lands vs. Court of Appeals, et al.*,[14] We ruled that the requirements of Section 12 and Section 13 of R.A. 26 reading as follows:

"SEC. 12. Petitions for reconstitution from sources enumerated in sections 2 (c), 2 (d), 2 (e), 2 (f), 3 (c), 3(e) and/or 3 (f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's mortgagee's or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location, area and boundaries of the property; (d) the nature and description of the buildings or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and of all persons who may have any interest in the property; (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the property have been presented for registration, or, if there be any, the registration thereof has not been accomplished, as yet. All the documents, or authenticated copies thereof, to be introduced in evidence in support of the petition for reconstitution shall be attached thereto and filed with the same: Provided, That in case the reconstitution is to be made exclusively from sources enumerated in section 2 (f) or 3 (f) of this Act, the petition shall be further accompanied with a plan and technical description of the property duly approved by the Chief of the General Land Registration Office, or with a certified copy of the description taken from a prior certificate of title covering the same property.

SEC. 13. The court shall cause a notice of 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 certificates of title, if known, the name of the registered owner, the name of the occupants or person in possession of the property, the owner 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 objection 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."

are mandatory and jurisdictional and non-compliance therewith would render all proceedings utterly null and void. We reiterated this rule in *Tahanan Development Corp. vs. Court of Appeals, et al.*[15] where, in respect particularly to the required notice to an adjoining owner, We categorically declared:

"The failure or omission to notify Tahanan as the owner, possessor or occupant of property adjacent to Lot 2 or as claimant or person having interest, title or claim to a substantial portion (about 9 hectares more or less) of Lot 2, as well as the failure or omission to post copies of the Notice of Hearing on the main entrance of the municipality (sic) on which the land is situated, at the provincial building and at the municipal building thereat, are fatal to the acquisition and exercise of jurisdiction by the trial court."

In *MWSS vs. Sison et. al.*, *supra.*, We further re-affirmed the foregoing doctrine:

"The publication of the petition in two successive issues of the Official Gazette, the service of the notice of hearing to the adjoining owners and actual occupants of the land, as well as the posting of the notices in the main entrance of the provincial and municipal buildings where the property lies at least 30 days prior to the date of the hearing, as prescribed by Section 13 of the law, are mandatory and jurisdictional requisites."

This re-affirmation is clear enough as to leave no room for any convoluted logic to support a sophistic distinction between said case and the instant case and an implausible interpretation of the law.

We further find to be totally unfounded the view of the Court of Appeals that Section 13 of R.A. No. 26 "appears to have been at least impliedly amended by Presidential Decree No. 1529." There is absolutely nothing in P.D. No. 1529 which intimates or suggests, indirectly or even remotely, an intention to amend said Section 13. The Court of Appeals either misapprehended or read out of context that portion of Section 23 of P.D. No. 1529 reading as follows:

"x x x that the publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court."

Worse, it committed a serious blunder when it used this clause to support its proposition of implied amendment of Section 13 of R.A. No. 26 by virtue of Section 110 of the Decree.

Section 23 of P.D. No. 1529 is entitled Notice of initial hearing, publication, etc. and provides, *inter alia*, that:

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

As regards publication, it specifically provides:

"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. x x x"

This proviso was never meant to dispense with the requirement of notice by mailing and by posting. What it simply means is that in so far as publication is concerned, there is sufficient compliance if the notice is published in the Official Gazette, although the law mandates that it be published "once in the Official Gazette and once in a newspaper of general circulation in the Philippines." However, publication in the latter alone would not suffice. This is to accord primacy to the official publication.

That such proviso was never meant to dispense with the other modes of giving notice, which remain mandatory and jurisdictional, is obvious from Section 23 itself. If the intention of the law were otherwise, said section would not have stressed in detail the requirements of mailing of notices to all persons named in the petition who, per Section 15 of the Decree, include owners of adjoining properties, and occupants of the land.

The above view of the Court of Appeals negates one of the principal purposes of the Decree, which is clearly expressed in its exordium, namely, to strengthen the Torrens System through safeguards to prevent anomalous titling of real property. It opens wide the doors to fraud and irregularities in land registration proceedings and in proceedings for the reconstitution of certificates of title. Judicial notice may be taken of the fact that only very few have access to or could read the Official Gazette, which comes out in few copies only per issue. If publication in the Official Gazette of the notice of hearing in both proceedings would be sufficient to confer jurisdiction upon the court, owners of both unregistered and registered lands may someday painfully find out that others have certificates of title to their land because scheming parties had caused their registration, or secured reconstituted certificates of title thereto and sold the property to third parties.

The belabored argument of respondent Court of Appeals that it would be unfair to impose upon the private respondent the duty to comply with the requirement of service of notice because it was not through her fault that the original copy of the Transfer Certificate of Title was lost is unacceptable since the law does not make any exception or exemptions; besides, it is, to say the least, a ludicrous proposition. Equally unacceptable is the opinion of said Court that it was the duty of the trial court to serve the required notices and private respondent should not be prejudiced if it failed to do so. It suggests, quite unfortunately, and gives the wrong impression that mandatory requirements of notices may be dispensed with if the failure to comply with them is attributable to the court. It likewise negates the principles of responsibility, integrity, loyalty and efficiency which the Constitution directs public officials and employees to faithfully observe. We should stress here that lapses on the part of courts or their personnel cannot be made a reason or a justification for non-observance of laws. By the very nature of their functions, they should be the first to obey the laws.

IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered GRANTING the instant petition and SETTING ASIDE the Decision of 29 August 1988 and the Resolution of 18 October 1988 of respondent Court of Appeals in C.A.-G.R. CV NO. 15163 and the Order of Branch No. 39, of the Regional Trial Court of Oriental Mindoro, Fourth Judicial Region in Petition No. 11,456.

Costs against private respondent.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Third Division, per Justice Melo, concurred in by Justices Marigomen and Imperial; Annex "B" of Petition; Rollo, 25-30.

[2] Entitled Florencia M. Marasigan, petitioner-appellee, vs. Republic of the Philippines, oppositor-appellant.

[3] Annex "C" of Petition; Id., 31.

[4] Annex "A" of Petition; Id., 22-23.

[5] Annex "F" of Petition; Rollo, 47-53.

[6] Annex "D" of Petition; Id., 34-36.

[7] Annex "A" of Petition.

[8] Annex "E" of Petition (Brief for Oppositor-Appellant); Rollo, 39-46.

[9] Annex "B" of Petition; Id., 24-30.

[10] Rollo, 54.

[11] Id., 55-58.

[12] Rollo, 78-87.

[13] Id., 67-71.

[14] 102 SCRA 370, 434 (1981).

[15] 118 SCRA 273 (1982).

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