

## SPECIAL SEVENTEENTH DIVISION

[ CA-G.R. SP No. 107099, April 26, 2010 ]

**NEDIE DE VERA, ALLAN DE VERA, BENJAMIN DE VERA, LANA DE VERA LIM, AND CONCEPCION D. DAYRIT, PETITIONERS, VS. REGIONAL TRIAL COURT OF SORSOGON CITY, BRANCH 51, RESPONDENT.**

### DECISION

## Court of Appeals

### *The Case*

Before Us is a Petition for Certiorari<sup>[1]</sup> assailing the Orders dated **June 04, 2008**,<sup>[2]</sup> **September 10, 2008**,<sup>[3]</sup> and **November 06, 2008**<sup>[4]</sup> of the Regional Trial Court of Sorsogon City<sup>[5]</sup> ("RTC") in SP Proc. No. 2008-7893 entitled "*PETITION FOR CORRECTION OF ENTRY/IES UPON ORIGINAL CERTIFICATE OF TITLE NO. P-9010 OF THE REGISTRY OF DEEDS FOR THE PROVINCE OF SORSOGON, NEDIE DE VERA; ALLAN DE VERA; BENJAMIN DE VERA; LANA DE VERA LIM; CONCEPCION D. DAYRIT, Petitioners.*", the dispositive portions of which read:

(1) Order dated **June 04, 2008**:

"As the instant petition failed to implead the said indispensable parties whose hereditary rights to the property subject of this petition may be affected if the same is granted, the petition is hereby dismissed *motu proprio*, without prejudice to whatever other remedy the petitioners may choose to avail of in this instant.

SO ORDERED."<sup>[6]</sup>;

(2) Order dated **September 10, 2008**:

"WHEREFORE, finding merit in the Motion for Reconsideration, the same is hereby GRANTED. The order of dismissal dated June 4, 2008 is therefore cancelled or set aside. However, the petitioners are ordered to amend the petition impleading the indispensable parties.

SO ORDERED."<sup>[7]</sup>; and

(3) Order dated **November 06, 2008**:

"Accordingly, the Partial Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED."<sup>[8]</sup> (emphasis supplied)

### ***The Facts***

Petitioners Nedie de Vera, Allan de Vera, Benjamin de Vera, Lana de Vera Lim and Concepcion C. Dayrit (hereinafter referred to as the "**De Veras**") claim that they are the known surviving legitimate heirs of Alfredo Y. de Vera ("**Alfredo**") and Dolores Lim-de Vera ("**Dolores**"), a.k.a. Dayche Lim de Vera a.k.a. Dolores Lim Le Chi. The De Veras allege that on July 31, 1936, Alfredo and Dolores were legally married in Amoy, China. Subsequently, Alfredo and Dolores came to the Philippines and were married anew in Manila on September 15, 1951. In the course of their marriage, Alfredo acquired two parcels of land in Barrio Buenavista, Sorsogon, Sorsogon which was covered by **Original Certificate of Title No. P-9010 and Original Certificate of Title No. P-9011**.

Petitioners further allege that when **OCT No. P-9010** was issued on December 04, 1968, Alfredo was inadvertently described as "xxx married to Rosalina Ayo xxx" when in truth and in fact he was not.<sup>[9]</sup>

Alfredo de Vera died<sup>[10]</sup> intestate on December 31, 1986 while Dolores died<sup>[11]</sup> intestate on September 13, 1995.

Meanwhile, on October 10, 1991, Rosalina Ayo and the purported heirs of Alfredo de Vera ("**Ayo, et al.**") with her, filed a Complaint<sup>[12]</sup> against the De Veras for Partition, Accounting, Specific Performance with Prayer for Receivership and Damages with the Regional Trial Court of Sorsogon City, docketed as Civil Case No. 91- 5668. The complaint sought the partition of that parcel of land covered by OCT No. P-9011, which allegedly was a conjugal property of Alfredo de Vera and Rosalina Ayo.

On March 21, 1997, the RTC rendered a Decision<sup>[13]</sup> **in favor of Ayo, et al.**, the dispositive portion of which reads:

"ACCORDINGLY, judgment is hereby rendered:

1/ Declaring the plaintiffs as the owners of one-half (1/2) of the land described in paragraphs 4 of the complaint (sic) covered by OCT No. P-9011, Lot 191 and declaring the defendants as the owners of the other half (1/2) of the said land and ordering the parties to partition the land in this proportion;

2/ Ordering the defendants to reimburse the plaintiffs produce of the land in question P8,000.00 a year from 1988 until the property is partitioned and possession delivered to plaintiffs;

3/ Ordering the defendants jointly to pay plaintiffs P12,000.00 for attorney's fee and P5,000.00 for expenses of litigation and costs of suit.

SO ORDERED."<sup>[14]</sup>

Aggrieved, the De Veras appealed said decision to this Court. After the parties filed their briefs, this Court through its Special Third Division, rendered on July 31, 2006

a Decision<sup>[15]</sup> **reversing** the March 21, 1997 RTC Decision, the dispositive portion of which reads:

**"WHEREFORE**, the assailed Decision dated March 21, 1997 ordering partition of the subject lot between appellants and appellees is **SET ASIDE**. As prayed for in appellants' brief, the Register of Deeds of the Province of Sorsogon is hereby directed to correct the description of Alfredo De Vera in OCT No. P-9011 from "married to Rosalina Ayo" to **"married to Dolores Lim."** However, appellants' prayer for an award of P2,000.000.00 moral damages, attorney's fees and incidental expenses are denied for being devoid of merit.

SO ORDERED."<sup>[16]</sup>

The July 31, 2006 Decision of this Court became final and executory on August 24, 2006 as per its Entry of Judgment<sup>[17]</sup> dated October 27, 2006. Consequently, on November 6, 2006, said Decision and Entry of Judgment were inscribed<sup>[18]</sup> in **OCT No. P-9011**.

On March 18, 2008, the De Veras filed the subject petition for correction of entry/ies of **OCT No. P-9010**.<sup>[19]</sup> The same was raffled off to Branch 52 of the Regional Trial Court of Sorsogon City and docketed as Sp. Proc. No. 2008-7893.

### ***The Orders of the RTC***

On **June 04, 2008**, the RTC issued the first assailed Order<sup>[20]</sup> dismissing Sp. Proc. No. 2008-7893 *motu proprio* due to the **failure of the De Veras to implead Ayo, et al.** as indispensable parties, viz.:

"Upon perusal of the records of the petition filed before this Court and the attached decision in CA-GR CV No. 58035, it would appear that it is not only the herein petitioners who have an interest over the subject property but their half-siblings who were the plaintiffs-appellees in the aforementioned case, as well. After all, the Original Certificate of Title subject of this case is registered in the name of the petitioners' father, in this wise, **'Alfredo Y. De Vera married to Rosalina Ayo'**, the latter being the mother of the said half-siblings. It is the opinion of this Court that the children of Rosalina Ayo must be impleaded as indispensable parties in order to have a judicious adjudication of this case, but not in the present petition which is an action against the whole world, so to speak. The Court of Appeals in its decision in CA-GR CV No. 58035, even hinted that if filiation between the petitioners' father, Alfredo Y. De Vera and the children of Rosalina Ayo was proven, the latter would have an interest over the property subject in that case as heirs of Alfredo de Vera. Said the Court of Appeals:

'This Court is not unmindful of the principle that due recognition of an illegitimate child in a record of birth, a will, a statement before a court of record, or in any authentic writing is, in itself, a consummated act of acknowledgment of the child. However, the Sworn Statement of Alfredo de Vera is short of establishing appellees' filiation because he failed to

identify the names of the nine (9) children he sired with Rosalina Ayo. Illegitimate children are allowed to establish their claimed filiation by “any other means allowed by the Rules of Court and special laws”, like his baptismal certificate, a judicial admission, a family Bible in which his name has been entered, common reputation respecting his pedigree, admission by silence, the testimonies of witnesses, and other kinds of proof admissible under Rule 130 of the Rules of Court. Unfortunately, none of the aforementioned evidence was utilized by the appellees to substantiate their contention that they are the legal heirs of Alfredo de Vera.'

The Original Certificate of Title of the property subject of the present petition for correction is also in the name of **Alfredo Y. De Vera married to Rosalina Ayo** and obviously, would have been included in the suit of Rosalina Ayo's children against the petitioners in this case if they had known about its existence. In the course of the trial in the lower court and in the appealed case, the present petitioners never mentioned the existence of a second title in the name of Alfredo Y. De Vera and Rosalina Ayo either through inadvertence or by design. However, the more obvious reason for their reticence is that they were keeping said existence from their alleged half-siblings because if the said second title to the property is included for adjudication in the original case and in the event of an adverse decision against them, they would have at least retained the whole possession of the property covered by the unrevealed title since their alleged half-siblings were unaware about it. But fortunately or unfortunately for them, depending on the context in which the Court of Appeals decision is to be viewed, they won their appealed case which became the basis for their cause of action in this petition. But said Court of Appeals decision is only *res judicata* as regards the property covered by Original Certificate of Title No. P-9011 and such cannot be the basis of the grant of their prayer for correction of Original Certificate of Title No. P-9010 in the present petition, said property being unknown to the Court of Appeals at the time it decided the case, and hence could not have adjudicated upon it.”<sup>[21]</sup> (emphasis and underscoring supplied)

The De Veras moved for reconsideration<sup>[22]</sup> and for the inhibition/disqualification of Hon. Judge Victor C. Gella as well as the re-raffle of the petition.<sup>[23]</sup>

On July 21, 2008, Judge Gella issued an Order<sup>[24]</sup> inhibiting himself from the case. As a result, the petition for correction of OCT No. P-9010 was re-raffled to Branch 51 of the RTC of Sorsogon City.

On September 10, 2008, the RTC issued the second assailed Order<sup>[25]</sup> which, though granting the De Veras' motion for reconsideration, still ordered them to amend the petition and implead Ayo, et. al. as indispensable parties. Explained the trial court:

“This Court holds that the dismissal of the case on the ground that the indispensable parties, particularly the heirs of one Rosalina Ayo, were not impleaded, was at best premature for it deprived the petitioners their day in Court and their opportunity to present evidence to substantiate their

petition. A close scrutiny of the petitioners' petition and annexes would show that petitioners anchored their cause of action essentially on the ruling of the Court of Appeals dated July 31, 2006 (Annex 'F') where the dispositive portion thereof directed the Register of Deeds of Sorsogon to correct the entry in OCT No. P-9011 from 'MARRIED TO ROSALINA AYO' to 'MARRIED TO DOLORES LIM'. Said decision has become final and executory. In the said decision, the Court of Appeals had made a definitive ruling to the effect that appellees (who were the heirs of Rosalina Ayo) failed to prove by convincing evidence that Alfredo de Vera was married to Rosalina Ayo. The Court of Appeals declared that appellees failed to establish the fact of marriage between Rosalina Ayo and Alfredo de Vera, as well as their filiation with the latter.

Applying the doctrine of conclusiveness of judgment, the Court holds that petitioners have amply demonstrated their cause of action for the correction of entries in another document which is OCT NO. P-9011. Conclusiveness of judgment states that a fact or question which was in issue in a former suit and it was judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their parties on their the same [sic] or different cause of action, while the judgment remains unreversed by proper authority.

At any rate, such ruling of the Court of Appeals is still evidentiary and needs to be presented as evidence in this proceeding but there is really no compelling reason for the dismissal of the case. However, in the interest of justice, this case should not be deemed as an ex-parte proceeding as the petitioners sought this to be. This case should be considered adversarial in nature by applying by analogy the provisions of Rule 108 of the Rules of Court. It is indeed evident that there are persons who may have claim or interest which would be affected should this petition be granted. Thus, the Office of the Register of Deeds of Sorsogon and the legal heirs of Rosalina Ayo, who will be affected by this proceeding concerning the cancellation of correction of the entries in the aforementioned Original Certificate of Title, should be impleaded as indispensable parties and should be duly notified of the proceedings. Indeed, the requirements of fair play and due process should be upheld and complied [with] in this case.”<sup>[26]</sup>

Again, the petitioners moved for partial reconsideration but the same was denied in the third assailed November 06, 2008 Order, viz.:

“The instant case does not only involve the simple correction of erroneous entry in the certificate of Title subject of this case; this case, if the same would be granted, will result to affect the proprietary rights of the heirs of ROSALINA AYO, that if not to implead them as indispensable parties in the instant case would deprive them their day in Court to contest the same. In the interest of justice and fair play, the proceedings of the case should be therefore an adversarial one, but nor [sic] merely an ex parte proceeding.”<sup>[27]</sup>