

**[ CV No. 79452, November 29, 2007 ]**

**IN RE: PETITION FOR DECREE OF REGISTRATION: HEIRS OF VIRGINIA EUSTAQUIO-DIMAGUILA, NAMELY, VIRMA, RUSTICC, RONALD, ROEL, LORNA, ALL SURNAMED DIMAGUILA, GINA DIMAGUILA-REODIQUE, AND ELSI DIMAGUILA-MARINAS, PETITIONERS-APPELLEES, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR-APPELLANT.**

**D E C I S I O N**

**Court of Appeals**

In this appeal, appellant seeks to set aside the Decision<sup>[1]</sup> dated 07 May 2002 of the Metropolitan Trial Court of Taguig, Metro Manila, Branch 74 (trial court) in L.R.C Case No. 212; L.R.A. Rec. No. N-71532 entitled "In Re: Petition for Decree of Registration, Heirs of Virginia Eustaquio-Dimaguila, namely: Virma, Rustico, Ronald,

Roel, Lorna, all surnamed Dimaguila, Gina Dimaguila-Reodique, and Elsie Dimaguila-Marinas, represented by Virma E. Dimaguila, Petitioners."

The history of the case may be traced as follows:

On 25 August 1999, the heirs of Virginia Eustaquio Dimaguila, namely, Virma, Rustico, Ronald, Roel, and Lorna, all surnamed Dimaguila, Gina Dimaguila Reodique, and Elsie Dimaguila Marinas, represented by Virma Dimaguila ("appellees"), filed with the trial court a petition for registration<sup>[2]</sup> of a piece of land designated as Lot 2696-A of Subdivision Plan Csd-007607-000166-D (being a portion of Lot 2696), MCadm-590-D, Taguig Cadastral Mapping, situated in Barangay Ibayo-Tipas, Taguig, Metro Manila, consisting of 291 square meters.

In their petition, appellees alleged that they were the owners of the land having acquired it by right of representation as the compulsory heirs of Virginia Eustaquio Dimaguila, daughter of Anselmo Eustaquio. They further alleged that during his lifetime, and even earlier than 12 June 1945, Anselmo was in open, exclusive, and notorious possession and occupation of the land in the concept of an owner, and that their mother, Virginia, predeceased their grandfather, Anselmo. Appellees likewise asserted that they were in possession of the land having declared it for taxation purposes, and that there was no mortgage or encumbrance on it.

Thereupon, the trial court set the case for hearing on 10 January 2000.<sup>[3]</sup> On 15 September 1999, the Office of the Solicitor General (OSG) entered its appearance as counsel for the State.<sup>[4]</sup>

On 17 November 1999, the Land Registration Authority (LRA) submitted a report<sup>[5]</sup> recommending to the trial court that an order be issued to appellees directing them to: 1) amend their petition so as to include the names of the respective spouses of Ronald E. Dimaguila, Roel E. Dimaguila, Gina D. Reodique, and Elsie D. Marinas; 2)

submit the duplicate original and/or certified xerox copy of the technical description of Lot 2696-A as well as the original and/or certified true copy of plan Csd-007607-000166-D in tracing cloth or diazo polyester film; and 3) pay the publication fee.

On 10 January 2000, the trial court issued an order<sup>[6]</sup> resetting the hearing of the case to 25 May 2000 considering that the Notice of Initial Hearing had not yet been published in the *Official Gazette* by the LRA for appellees' failure to comply with the LRA report dated 17 November 1999.

To establish the jurisdictional facts of the case, appellees, on 25 May 2000, offered in evidence the following documents, to wit: 1) Notice of Initial Hearing issued by the LRA;<sup>[7]</sup> 2) Certificate of Publication in the *Official Gazette* issued by the LRA;<sup>[8]</sup> 3) Certificate of Notification issued by the LRA;<sup>[9]</sup> 4) copy of the *Official Gazette*;<sup>[10]</sup> 5) Certificate of Publication in the *Official Gazette* issued by the National Printing Office;<sup>[11]</sup> 6) Affidavit of Publication issued by the Advertising Manager of *The Challenger News*;<sup>[12]</sup> 7) copy of the newspaper *The Challenger News*;<sup>[13]</sup> and 8) Certificate of Posting issued by the Branch Sheriff.<sup>[14]</sup>

Having ascertained that the jurisdictional requirements for the application had been done in accordance with the law, the trial court, on 25 May 2000, issued an order<sup>[15]</sup> of general default against the whole world with the exception of the government. The trial court likewise set the case for the reception of appellees' evidence.

On 21 June 2000, the trial court issued an order<sup>[16]</sup> directing the LRA to submit the original tracing cloth plan of the land subject of the application. In its letter<sup>[17]</sup> dated 21 August 2000, the LRA informed the trial court that only a print copy of the subject plan was attached to the record on file in its office. The LRA explained that it had already called the attention of appellees thereto in its report dated 17 November 1999, but appellees never heeded the directive. The LRA requested the trial court to direct the appellees to comply with LRA Circular No. 06-2000.<sup>[18]</sup>

On 31 August 2000, the Laguna Lake Development Authority (LLDA) filed a Motion to Lift Order of General Default and Opposition.<sup>[19]</sup> The LLDA alleged, *inter alia*, that the land in question was located below "the reglementary lake elevation of 12.50 meters referred to datum 10.00 meters below mean lower water." Claiming that the lot was part of the bed of the Laguna Lake which was considered public land, the LLDA implored the trial court to render judgment dismissing the present petition.

On 11 September 2000, the trial court issued an order<sup>[20]</sup> directing appellees to comply with LRA Circular No. 06-2000 by submitting the original tracing cloth plan or *sepia* copy of plan Csd-007607-000166-D at the next scheduled hearing on 20 September 2000. However, appellees failed again to present the original tracing cloth plan at the hearing on 20 September 2000. Whereupon, the trial court reset anew the presentation of appellees' evidence to 25 October 2000.<sup>[21]</sup>

On 22 September 2000, the trial court received a letter<sup>[22]</sup> dated 21 September 2000 from the LRA. In its letter, the LRA stated that it was "returning herewith the original/ true copy of plan Csd-007607-000166-D in tracing cloth/diazo polyester

film." The LRA asserted that pursuant to LRA Circular No. 06-2000, " the original/true copy of said plan in tracing cloth/diazo polyester film should now be filed in the Court's record of the case." The LRA, moreover, stated that the Branch Clerk of Court should furnish its Office with a certified true copy of the said tracing cloth plan.

On 06 December 2000, the trial court issued an order<sup>[23]</sup> granting the LLDA's Motion to Lift Order of Default and admitting its Opposition to the application for registration.

Thereafter, the trial court received a report<sup>[24]</sup> dated 25 July 2001 from LRA. The report stated, *inter alia*, the after plotting the conversion plan of the subject land in the Municipal Index Sheet through its tie line, the LRA noted a discrepancy on the bearing and distance of the property as indicated on the plan. Thus, the LRA recommended that the trial court direct the Lands Management Bureau (DENR) and the Community Environment and Natural Resources Office to submit a report on the status of the land applied for registration to determine whether the property or any portion thereof was already covered by land patent. The LRA also recommended that the trial court direct the DENR Lands Management Services to verify the discrepancy pointed and to make the necessary correction thereof, and then, to submit the result of its findings.

On 28 November 2001, on LLDA's Manifestation<sup>[25]</sup> that it was withdrawing its Opposition in light of its finding that the disputed land was situated above the 12.5 meter reglementary elevation, and therefore, not part of its jurisdiction, the trial court issued an order<sup>[26]</sup> declaring the LLDA's Opposition withdrawn.

Appellees presented the following documents to support their application: 1) conversion plan of the subject land;<sup>[27]</sup> 2) Geodetic Engineer's Certificate attesting to the genuineness of the survey plan;<sup>[28]</sup> 3) technical description;<sup>[29]</sup> 4) tax declarations for the years 1994, 1993, 1991, 1985, 1983, 1979, 1974, 1966, and 1949;<sup>[30]</sup> 5) Confirmation Receipt and Official Receipts showing appellees' payment of realty taxes on the land for the years 1992, 1995 up to 1999.<sup>[31]</sup> On 07 May 2002, the trial court rendered the assailed decision, the dispositive portion of which reads:

"Wherefore, premises considered and finding that the allegations in the petition had been sufficiently established by the applicants' evidence, this Court hereby confirms the title of applicants Virma E. Dimaguila, single; Rustico E. Dimaguila, married to Flora Anonuevo; Gina E. Dimaguila-Reodique, married to Jersom E. Reodique; Roel E. Dimaguila, married to Emelita Dollente; and Elsie E. Dimaguila-Marinas, married to Ramon Marinas and all residents of Tipas, Taguig, Metro Manila over the subject parcel of lot known as Lot 2696-A, Mcadm-590-D, Taguig Cadastral Mapping under Conversion Subdivision Plan Csd-007607-000166-D situated at Barangay Ibayo-Tipas, Taguig, Metro Manila, consisting of Two Hundred Ninety One (291) square meters and hereby order the registration thereof in their names.

After finality of this Decision and upon payment of the corresponding

taxes due on the said lot, let an Order for the issuance of decree of registration be issued.

SO ORDERED."<sup>[32]</sup>

Hence, this recourse by appellant Republic.

Before this Court, appellant submits that the trial court committed the following reversible errors:

I. THE TRIAL COURT'S DECISION SUFFERS FROM JURISDICTIONAL DEFECT ON THE FOLLOWING GROUNDS.

1. NON-COMPLIANCE WITH THE JURISDICTIONAL REQUIREMENT REGARDING THE PUBLICATION OF THE NOTICE OF INITIAL HEARING;
2. NON-COMPLIANCE WITH THE JURISDICTIONAL REQUIREMENT OF MAILING AND POSTING OF SAID NOTICE;
3. THE ORIGINAL TRACING CLOTH PLAN WAS NOT SUBMITTED.

II. THE TRIAL COURT ERRED IN FINDING THAT APPELLEES BY THEMSELVES AND THROUGH THEIR PREDECESSORS-IN-INTEREST, HAS (*sic*) BEEN IN OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION OF THE SUBJECT LAND AND, THEREFORE, ENTITLED TO A DECREE OF REGISTRATION.<sup>[33]</sup>

According to appellant, the challenged decision suffers from jurisdictional defect because the initial hearing was set more than ninety (90) days from the date of the trial court's order dated 10 January 2000, in violation of Section 23 of P.D. 1529 which requires that the initial hearing be set not earlier than 45 days nor later than 90 days from the date of the order.

This argument is specious. The pertinent portion of Section 23 reads:

SEC. 23. *Notice of initial hearing, publication, etc.*—The court shall, within five days from filing of the application, 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.

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.

By mailing.

Mailing of notice to persons named in the application.—The Commissioner of Land Registration shall also, within seven days after publication of said notice in the *Official Gazette*, as herein before provided, cause a copy of the notice of initial hearing to be mailed to every person named in the notice whose address is known.

\* \* \*

By posting.

The Commissioner of Land Registration shall also cause a duly attested copy of the notice of initial hearing to be posted by the sheriff of the province or city, as the case may be, or by his deputy, in a conspicuous place on each parcel of land included in the application and also in a conspicuous place on the bulletin board of the municipal building of the municipality or city in which the land or portion thereof is situated, fourteen days at least before the date of initial hearing.

\* \* \*

As shown by the records, the trial court set the case for initial hearing on 10 January 2000. However, since the notice of initial hearing had not yet been published in the *Official Gazette* at that time due to appellees' failure to comply with LRA report dated 17 November 1999, the court moved the hearing date to 25 May 2000.

Needless to say, the duty and the power to set the hearing date lies with the land registration court.<sup>[34]</sup> Upon receipt of the order of the court setting the time for initial hearing, the LRA 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. If the LRA finds a mistake committed in the application or that certain documents required were not submitted, as what happened in the case at bar, the LRA reports the same to the court which issues an order requiring the applicant to make the necessary corrections and to submit the documents required. The applicant must comply with all these requirements before the publication of the notice of hearing.<sup>[35]</sup> Section 23 of PD 1529 does not provide a period within which the notice should be published in the *Official Gazette*, but for reasons already obvious, the publication should precede the date of initial hearing. Simply put, what is more important than the date on which the initial hearing is set is the giving of sufficient notice of the registration proceedings *via* publication.<sup>[36]</sup>

Appellant also contends that the court below did not acquire jurisdiction to hear the