

FIRST DIVISION

[G.R. No. 188956, March 20, 2013]

ARMED FORCES OF THE PHILIPPINES RETIREMENT AND SEPARATION BENEFITS SYSTEM, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

VILLARAMA, JR., J.:

Before us is a petition for review on certiorari under Rule 45 assailing the Orders dated February 17, 2009^[1] and July 9, 2009^[2] of the Regional Trial Court (RTC) of Pasig City, Branch 68, in Land Registration Case No. N-11517.

The first Order reconsidered and recalled the Decision^[3] of the RTC dated April 21, 2008, which granted the application for land registration of petitioner Armed Forces of the Philippines Retirement and Separation Benefits System. The second Order denied the Motion for Reconsideration filed by the petitioner.

Petitioner was "created under Presidential Decree (P.D.) No. 361,^[4] as amended, and was designed to establish a separate fund to guarantee continuous financial support to the [Armed Forces of the Philippines] military retirement system as provided for in Republic Act No. 340."^[5]

Petitioner filed an Application for Registration of Title^[6] over three parcels of land located in West Bicutan, Taguig City, before the RTC of Pasig City. The said application was later docketed as LRC Case No. N-11517 and raffled to Branch 68 of the court *a quo*.

These three parcels of land constitute a land grant by virtue of Presidential Proclamation No. 1218, issued by former President Fidel V. Ramos on May 8, 1998.^[7]

The application was filed by Mr. Honorio S. Azcueta (Mr. Azcueta), the then Executive Vice President and Chief Operating Officer of the petitioner, who was duly authorized to do so by the Board of Trustees of the petitioner, as evidenced by a notarized Secretary's Certificate^[8] dated August 18, 2003.

After due posting and publication of the requisite notices, and since no oppositor registered any oppositions after the petitioner met the jurisdictional requirements, the court *a quo* issued an order of general default against the whole world, and the petitioner was allowed to present evidence *ex-parte*.^[9]

The petitioner then presented as its witness, Ms. Alma P. Aban (Ms. Aban), its Vice President and Head of its Asset Enhancement Office. She testified, *inter alia*, that:

among her main duties is to ensure that the properties and assets of petitioner, especially real property, are legally titled and freed of liens and encumbrances; the subject properties were acquired by the petitioner through a land grant under Presidential Proclamation No. 1218; prior to Presidential Proclamation No. 1218, the Republic of the Philippines was in open, continuous, exclusive, notorious, and peaceful possession and occupation of the subject properties in the concept of an owner to the exclusion of the world since time immemorial; petitioner, after the Republic of the Philippines transferred ownership of the subject properties to it, assumed open, continuous, exclusive, notorious, and peaceful possession and occupation, and exercised control over them in the concept of owner, and likewise assumed the obligations of an owner; petitioner has been paying the real estate taxes on the subject properties; and the subject properties are not mortgaged, encumbered, or tenanted.^[10]

Subsequently, petitioner submitted its Formal Offer of Evidence,^[11] following which, the court *a quo* granted the application in a Decision dated April 21, 2008. The dispositive portion of the said decision reads:

WHEREFORE, finding the Petition meritorious, the Court **DECLARES, CONFIRMS AND ORDERS** the registration of AFPRSBS' title thereto.

As soon as this Decision shall have become final and after payment of the required fees, let the corresponding Decree be issued in the name of **Armed Forces of the Philippines Retirement and Separation Benefits System**.

Let copies of this Decision be furnished the Office of the Solicitor General, Land Registration Authority, Land Management Bureau and the Registry of Deeds, Taguig City, Metro Manila.

SO ORDERED.^[12]

In response, the Office of the Solicitor General (OSG) filed a Motion for Reconsideration^[13] dated May 12, 2008, wherein it argued that the petitioner failed to prove that it has personality to own property in its name and the petitioner failed to show that the witness it presented was duly authorized to appear for and in its behalf.

On June 2, 2008, petitioner filed its Comment/Opposition.^[14]

On February 17, 2009, the court *a quo* issued the assailed Order granting the Motion for Reconsideration of the OSG on the ground that the petitioner failed to prosecute its case. The dispositive portion of the assailed Order reads:

WHEREFORE, premises considered, the OSG's motion for reconsideration is **GRANTED**. The Court's Decision of April 21, 2008 is hereby **RECONSIDERED** and **RECALLED**, and a new one issued **DISMISSING** this Application for Registration of Title for failure to prosecute.

SO ORDERED.^[15]

The Motion for Reconsideration^[16] of petitioner was denied by the court *a quo* in the other assailed Order^[17] dated July 9, 2009. Hence, this petition.

The issue to be resolved in the present case is whether the court *a quo* acted contrary to law and jurisprudence when it dismissed petitioner's application for land registration on the ground that petitioner failed to prosecute the subject case.

We answer in the affirmative.

The reason of the court *a quo* in dismissing petitioner's application for land registration on the ground of failure to prosecute was the lack of authority on the part of Ms. Aban to testify on behalf of the petitioner.

However, Section 3, Rule 17 of the 1997 Rules of Civil Procedure, as amended, provides only three instances wherein the Court may dismiss a case for failure to prosecute:

Sec. 3. *Dismissal due to fault of plaintiff.*—If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

Jurisprudence has elucidated on this matter in *De Knecht v. CA*:^[18]

An action may be dismissed for failure to prosecute in any of the following instances: **(1) if the plaintiff fails to appear at the time of trial; or (2) if he fails to prosecute the action for an unreasonable length of time; or (3) if he fails to comply with the Rules of Court or any order of the court.** Once a case is dismissed for failure to prosecute, this has the effect of an adjudication on the merits and is understood to be with prejudice to the filing of another action unless otherwise provided in the order of dismissal. In other words, unless there be a qualification in the order of dismissal that it is without prejudice, the dismissal should be regarded as an adjudication on the merits and is with prejudice. (Emphasis supplied.)

Clearly, the court *a quo*'s basis for pronouncing that the petitioner failed to prosecute its case is not among those grounds provided by the Rules. It had no reason to conclude that the petitioner failed to prosecute its case. First, the petitioner did not fail to appear at the time of the trial. In fact, the Decision of the RTC dated April 21, 2008 ordering the registration of petitioner's title to the subject lots shows that the petitioner appeared before the Court and was represented by