

## SECOND DIVISION

[ G.R. No. 172848, December 10, 2008 ]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. JOSE VICTORINO K. CASTRO (AS ATTORNEY-IN-FACT OF THE HEIRS OF ROGELIO CASTRO) AND VIOLETA KAMOSENG CASTRO (AS ATTORNEY-IN-FACT OF NILDA CASTRO-STAHN), RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

Before us is a petition<sup>[1]</sup> seeking the review and reversal of the Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. CV No. 81816 dated 22 July 2005 and 26 May 2006, respectively.

The antecedents follow.

On 8 February 2001, the heirs of Rogelio Castro and Nilda Castro-Stahl (heirs) filed a verified petition seeking the reconstitution of Transfer Certificate of Title (TCT) No. "(N.A.)" covering Lots 159, 167 and 172, block 8, Psu-25131, with areas of 6,470 sqm., 2,592 sqm. and 4,185 sqm., respectively, situated in Balayhangin, Calauan, Laguna.<sup>[4]</sup> Attached to the petition are: (i) a Tax Declaration over a property in Balayhangin, Calauan, Laguna identified only as Cadastral Lot No. 159,167,172 in the name of "Nilda V. Castro (S)-½ & Victorino K. Castro; Joel K. Castro, Jose Alexis K. Castro & Marivic K. Castro, all ½;"<sup>[5]</sup> (ii) a Resurvey Plan of Lots 159, 167, & 172, Blk. 8, Psu-25131;<sup>[6]</sup> (iii) Technical Descriptions of Lots 159, 167 and 172;<sup>[7]</sup> (iv) Certification from the Register of Deeds of Santa Cruz, Laguna that Lots 159, 167, & 172 of Block 8, Psu-25131 are not among the records on file;<sup>[8]</sup> and (v) a Geodetic Engineer's Certificate stating that he had surveyed Lot-159Rs-043406-00I892.<sup>[9]</sup>

Finding the petition sufficient in form and substance, the trial court issued an Amended Order: (i) directing interested parties to file their opposition to the petition or show cause why the same should not be granted; and (ii) ordering the heirs to cause the publication of the order.<sup>[10]</sup>

During the proceedings in the trial court,<sup>[11]</sup> the heirs averred that the lots were inherited by Rogelio Castro and Nilda Castro-Stahl from their grandparents Juan Castro and Maria Carudan who, in turn, purchased the lots from Doña Margarita Roxas de Ayala vda. de Soriano (Roxas). The lots were once part of Hacienda Calauan owned by Roxas. According to the heirs, their copy of the TCT covering the properties was lost during World War II and could not be recovered despite diligent efforts. Moreover, the original copy of the TCT on file with the Register of Deeds of Santa Cruz, Laguna, as well as the pertinent documents, was lost and destroyed on account of the war. The heirs caused the survey of the lots and acquired a Resurvey

Plan approved by the Department of Environment and Natural Resources.<sup>[12]</sup>

On 18 November 2003, the trial court granted the petition, thus:

WHEREFORE, finding the petition to be supported by evidence on record, the Registry of Deeds of Santa Cruz, Laguna is hereby ordered to reconstitute Transfer Certificate of Title No. (N.A.) covering Lot 159, Lot 167, and Lot 172, Block 8, Psu-25131 all situated at Barangay Balayhangin, Calauan, Laguna in the name of the original owner Margarita Roxas y Ayala Vda. De Soriano, using as basis thereof the plan and technical descriptions of said lots, together with pertinent documents attached herewith, subject to the conditions that the said reconstituted title shall be subject to such encumbrances as maybe [*sic*] subsisting and provided further that no certificate of title covering the same parcel of land exist in his office.<sup>[13]</sup>

The Republic, through the Office of the Solicitor General (OSG), elevated the case to the Court of Appeals by way of an ordinary appeal.<sup>[14]</sup> The Court of Appeals, however, denied the appeal on 22 July 2005, after finding that the evidence presented by the heirs proved that the subject lots had belonged to Roxas and had been sold to Juan Castro and Maria Carudan, the predecessors-in-interest of the heirs. Moreover, the Court of Appeals held that the lots had been properly surveyed, with no discrepancies or inaccuracies, and that the technical description of the lots had been verified by the Land Registration Authority. The appellate court noted that the Republic had never interposed any opposition to the petition nor objection to the evidence presented by the heirs and neither had it presented evidence against the claims of the heirs.<sup>[15]</sup>

The OSG filed a motion for reconsideration<sup>[16]</sup> of the decision, alleging that: (i) the documents attached to the brief of the heirs as appellees may not be considered in evidence since the heirs had not filed a motion for new trial on the ground of newly-discovered evidence; and (ii) there was no sufficient evidence that a single TCT had been issued over the subject lots. The Court of Appeals denied the motion, stressing that it had not resolved the issues solely on the basis of the appended documents and that, even without the said documents, the evidence already presented in the court *a quo* had firmly established the heirs' entitlement to the reconstitution of their title to the subject lots.<sup>[17]</sup>

The documents appended to the appellees' brief were: (1) the General Subdivision Plan of Hacienda Calauan;<sup>[18]</sup> (2) the Log Book of Hacienda Calauan showing lot numbers and block numbers;<sup>[19]</sup> and (3) a copy of TCT No. 4246<sup>[20]</sup> with the name "Margarita Roxas y Ayala viuda de Soriano" inscribed therein as the registered owner.

Before us, the OSG reiterates that the documents attached to the appellees' brief filed in the Court of Appeals in support of their petition for reconstitution of title may not be considered in evidence because they did not file a motion for new trial based on newly-discovered evidence. Furthermore, even assuming that the documents which the heirs submitted for the first time on appeal may be considered in evidence, said documents as well as the other evidence presented in the proceedings *a quo* do not suffice for the reconstitution of the TCTs covering the

subject lots, the OSG claims.

According to the OSG, TCT No. 4246 shows that it covers a parcel of land located in Calauan described as Lot No. 384 of Block 9. However, it does not show that Lot No. 384 includes the subject lots owned by respondents. In any case, even if the subject lots form part of the parcel of land covered by TCT No. 4246, there is no evidence that TCT No. 4246 was cancelled and that a separate title covering the subject lots was issued. The Log Book, on the other hand, refers to a parcel of land described as Block 2, while the land covered by TCT No. 4246 was described as Block 9. Finally, the OSG avers that there is no showing that a certificate of title was ever issued covering the subject lots. In fact, Jose Victorino Castro, one of the heirs, testified that he was not aware if a certificate of title was issued in the name of Roxas covering the subject lots, which leads to the conclusion that the lots are unregistered and cannot be subject of a petition for reconstitution.

For their part, the heirs advert to a certified true copy of the Deed of Absolute Sale<sup>[21]</sup> between Roxas and Maria Carudan vda. de Castro over Lot Nos. 124, 159, 167 and 172 of Plan Psu-25131 of Hacienda Calauan. They aver that this document, the original of which is in the custody of the National Archives, confirms the judiciousness of the trial court's decision.<sup>[22]</sup>

In reply, the OSG claims that assuming *arguendo* that the subject lots were covered by the transfer certificates of title mentioned in the deed of sale, there is no proof that the certificates of title were cancelled and consolidated into a single transfer certificate of title by Roxas, which would justify the reconstitution of only one certificate of title.<sup>[23]</sup> It adds that the reconstitution of a certificate of title with an unknown number was viewed with disfavor by this Court in one case.<sup>[24]</sup> Moreover, it points out that if TCT No. 4246 is the certificate of title covering the subject lots, said TCT should have at least been mentioned in the deed of sale.<sup>[25]</sup>

The petition deserves favorable action.

*First.* It is a settled rule that proceedings for judicial reconstitution of certificates of title are proceedings *in rem*, with the publication of the notice of hearing in the Official Gazette sufficient to clothe the court with jurisdiction.<sup>[26]</sup> It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it.<sup>[27]</sup>

In *Tahanan Development Corp. v. Court of Appeals*,<sup>[28]</sup> the Court had the opportunity to discuss the mandatory nature of the requirements of Republic Act No. 26, thus:

Republic Act No. 26 entitled "An act providing a special procedure for the reconstitution of Torrens Certificates of Title lost or destroyed" approved on September 25, 1946 confers jurisdiction or authority to the Court of First Instance to hear and decide petitions for judicial reconstitution. The Act specifically provides the special requirements and mode of procedure that must be followed before the court can properly act, assume and acquire jurisdiction or authority over the petition and grant the reconstitution prayed for. These requirements and procedure are

mandatory. The Petition for Reconstitution must allege certain specific jurisdictional facts; the notice of hearing must be published in the Official Gazette and posted in particular places and the same sent or notified to specified persons. Section 12<sup>[29]</sup> and 13<sup>[30]</sup> of the Act provide specifically the mandatory requirements and procedure to be followed.<sup>[31]</sup>

In one case,<sup>[32]</sup> the Court ruled that in a petition for reconstitution, all the data required by Republic Act No. 26 must be included in the petition. Indeed, the requirements in Section 12, on the contents of a petition, and Section 13, on the publication of the notice of petition, are mandatory and jurisdictional in nature and the non-observance thereof fatally affects the whole proceedings in all its aspects.

Upon examination of the petition, the Court finds that the Amended Order, containing the notice of petition and hearing date of the trial court, was published in the Official Gazette. However, the amended order as issued and published does not align with the *in rem* character of the reconstitution proceedings and the mandatory nature of the requirements under Republic Act No. 26. There is a mortal insufficiency in the publication in that the heirs had identified the missing/lost title merely as "TCT No. (N.A.)."<sup>[33]</sup> The failure to identify the exact title number defeats the purpose of the twin notice and publication requirements since persons who have interest in the property or who may otherwise be affected by the reconstitution of the supposed title thereto would not be able to readily identify the said property or could even be misled by the vague or uncertain title reference.

Moreover, under Section 12 of Republic Act No. 26,<sup>[34]</sup> all the documents, or authenticated copies to be introduced in evidence in support to the petition for reconstitution should be attached thereto and filed with the same. In this case, the heirs anchor their claim on the deed of sale between Roxas and Maria Carudan which allegedly established their full and lawful ownership of Lots 159, 167 and 172. However, the deed was not attached to their petition, but merely presented before the trial court for the first time as late as 25 August 2003,<sup>[35]</sup> or two years after the petition was filed and a year after the Amended Order was published in the Official Gazette. The heirs should have amended their petition to include the deed of sale so that it could be properly introduced in evidence, and subsequently caused the publication of the Amended Order which served as the notice of petition conformably with Sec. 12 of Republic Act No. 26.

As the heirs failed to indicate the number of the lost TCT and to attach the deed of sale to the petition, necessarily these data could not have appeared as in fact they did not so appear in the notice of hearing published in the Official Gazette. In view of these omissions, the Court rules that the trial court did not acquire jurisdiction to proceed with the case since the mandatory manner or mode of obtaining jurisdiction as prescribed by the statute had not been strictly followed, thereby rendering the proceedings utterly null and void.<sup>[36]</sup>

*Second.* The heirs sought the reconstitution of one title-TCT No. (N.A.), supposedly covering Lots 159, 167, and 172 of Block 8, Psu-25131. Per the deed of sale, these lots were, at the time of the sale, individually covered by TCT Nos. 4710, 4718 and 4723, respectively.<sup>[37]</sup> If there were indeed three (3) separate titles for each of the lots, it is perplexing why the heirs would seek the reconstitution of just one TCT--