

## SECOND DIVISION

[ G.R. NO. 142810, August 18, 2005 ]

**DOLORES A. CABELLO AND TEOFILO ABELLANOSA,  
PETITIONERS, VS. THE REPUBLIC OF THE PHILIPPINES,  
RESPONDENT.**

### D E C I S I O N

**TINGA, J.:**

This *Petition*<sup>[1]</sup> dated April 12, 2000 assails the *Decision*<sup>[2]</sup> dated November 17, 1999 and *Resolution*<sup>[3]</sup> dated April 5, 2000 of the Court of Appeals, respectively reversing the trial court's *Decision*<sup>[4]</sup> ordering the reconstitution of a certificate of title and denying petitioners' motion for reconsideration.

The facts are straightforward.

In a *Petition*<sup>[5]</sup> dated January 20, 1996, Dolores A. Cabello and Teofilo Abellanos sought the reconstitution of an unknown Original Certificate of Title covering Lot No. 4504 of the Cadastral Survey of Cebu pursuant to Decree of Registration No. 335316. *Petitioners* alleged therein that an original certificate of title over the property was issued by the Registry of Deeds of Cebu City in the names of Basilio and Roberto Abellanos. However, the original certificate of title on file with the Registry of Deeds and the owner's duplicate certificate of title in the possession of the registered owners were lost during World War II. Further, the petition was allegedly filed pursuant to Sec. 2(d) in relation to Sec. 12 of Republic Act No. 26 (RA 26), which dispenses with the requirement of submission of the tracing cloth/blue print plan and technical description.

Attached to the petition are a certified photocopy of Decree of Registration No. 335316 issued by the Land Registration Commission; a certification issued by the Registry of Deeds of Cebu City to the effect that its records do not show that a certificate of title has been issued over Lot No. 4504; and Tax Declaration No. 20335 in the name of co-owner Basilio Abellanos.

After due proceedings, the trial court rendered a *Decision*<sup>[6]</sup> dated August 28, 1996, ordering the Registry of Deeds of Cebu City to reconstitute the original certificate of title for Lot No. 4504 in the names of Basilio Abellanos, married to Severina Bacalso, and Roberto Abellanos, married to Apolonia Nacua, based on Decree of Registration No. 335316.

The Republic, represented by the Office of the Solicitor General (OSG), appealed the *Decision*, contending that the certification issued by the Registry of Deeds of Cebu City puts in doubt whether an original certificate of title covering Lot No. 4504 was previously issued in the names of petitioners' predecessors-in-interest. Assuming

that a certificate of title was so issued, the petition should have been accompanied by a plan and technical description of the property duly approved by the Chief of the General Land Registration Office or a certified copy of the description taken from a prior certificate of title covering the property since it was based on Sec. 2(f) or 3(f) of RA 26.<sup>[7]</sup>

The appellate court reversed the trial court's findings, ruling that the documents presented by petitioners in support of their petition for reconstitution fall under Sec. 2(f) of RA 26 since the decree of registration does not establish by any reasonable measure the existence of an earlier certificate of title over the property concerned. Hence, petitioners should have produced a duly approved plan and technical description as mandated under Sec. 12 of RA 26.

The Court of Appeals denied petitioners' motion for reconsideration.

*Petitioners* are now before this Court averring that the petition for reconstitution was based on Sec. 2(d) of RA 26. Under this section of the law, an authenticated copy of the decree of registration or patent pursuant to which the original certificate of title was issued is sufficient to support a petition for reconstitution. The plan and technical description are therefore no longer required.

The appellate court also allegedly erred in finding that the decree of registration petitioners presented does not establish the existence of an earlier certificate of title.

The OSG filed its *Comment*<sup>[8]</sup> dated August 22, 2000, arguing that RA 26 presupposes that a title was previously issued by the Registry of Deeds in the name of the applicant which was subsequently lost or destroyed. In this case, the certification issued by the Registry of Deeds shows that said office did not issue a certificate of title covering Lot No. 4504. Even assuming that such a certificate of title was issued, the OSG avers that petitioners should have presented an authenticated copy of the decree of registration and not a mere certified photocopy. Moreover, they should have accompanied the petition with a plan and technical description of the property duly approved by the Land Registration Authority or with a certified true copy of the description taken from a prior certificate of title covering the same property pursuant to Sec. 12 of RA 26.

In their *Reply*<sup>[9]</sup> dated October 9, 2003, petitioners maintain that the certification issued by the Registry of Deeds was so worded because both the original and the duplicate certificate of title were lost and/or destroyed during World War II. Moreover, the decree of registration they presented is according to them an authenticated copy admissible under the Rules of Court. They also aver that RA 26 does not require the presentation of the plan and technical description of the property if the basis for the petition for reconstitution is, as in this case, Sec. 2(d) thereof.

We deny the petition.

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, lays down the procedure by which previously issued but lost or

destroyed certificates of title may be reconstituted. As the title of the law suggests, it presupposes that the property whose title is sought to be reconstituted has already been brought under the provisions of the Torrens System, Act 496.<sup>[10]</sup>

Republic Act No. 26 confers jurisdiction or authority on the Court of First Instance (now the Regional Trial Court) to hear and decide petitions for judicial reconstitution. It provides the special requirements and 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. 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.<sup>[11]</sup> Sections 12 and 13 of RA 26 set forth the contents of the petition and lay down the procedure to be followed therefor, as follows:

SECTION 12. *Petitions* for reconstitution from sources enumerated in sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 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 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) of 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.*** [Emphasis supplied.]

SECTION 13. The court shall cause a notice of the 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 certificate of