

## SIXTEENTH DIVISION

[ CA-G.R. CV NO. 99586, November 20, 2014 ]

**HEIRS OF DON MARIANO LOPEZ DE LEON, NAMELY: TORIBIO E. LOPEZ DE LEON, THE HEIRS OF LAURO P. LOPEZ DE LEON, REBECCA LOPEZ DE LEON-CARRASCO, THE HEIRS OF MAXIMO LOPEZ DE LEON, APOLINARIO LOPEZ DE LEON, CONRADO LOPEZ DE LEON, PEDRO E. LOPEZ DE LEON, MARIANO E. LOPEZ DE LEON, SILVERIA LOPEZ DE LEON, GEN. PACIFICO MARIANO LOPEZ DE LEON, REPRESENTED BY THEIR ATTORNEY-IN-FACT, GEN. PACIFICO M. LOPEZ DE LEON, WHO ACTS ALSO IN HIS OWN RIGHT, PETITIONERS-APPELLANTS, VS. NORMA C. ESPINOSA, RESPONDENT-APPELLEE.**

### *DECISION*

**BATO, JR., J.:**

This is an appeal from the Order<sup>[1]</sup> dated May 3, 2012 issued by the Regional Trial Court of Las Piñas City, Branch 255, in Spl. Case No. 06-0190, which granted respondent-appellee's petition for relief from judgment and ordered the dismissal of petitioners-appellants' petition for quieting of title. More specifically, the dispositive portion of the appealed Order reads:

WHEREFORE, in view of all the foregoing, the Court finds the instant petition for relief from judgment to be meritorious and the same is hereby GRANTED. Accordingly, the Decision dated September 9, 2008 rendered by this Court is hereby SET ASIDE for being void.

Further, pursuant to Section 1, Rule 9 of the Revised Rules of Court, the main petition for quieting of title filed by the Heirs of Don Mariano Lopez De Leon is DISMISSED on the ground that the same is already barred by a prior judgment (res judicata).

SO ORDERED.

The facts are borne out by the records.

On September 21, 2006, the heirs of the late Don Mariano Lopez De Leon (hereinafter "appellants") filed a Petition<sup>[2]</sup> for Quietening of Title against Norma C. Espinosa (hereinafter "appellee"), alleging that:

3. Petitioners are the surviving descendants and compulsory heirs of the late Don Mariano Lopez de Leon, who had died sometime in September 14, 1941, leaving to petitioners, among others, the parcel of land

covered by Original Certificate of Title No. 3053 (OCT No. 3053) issued in 1924 by the Register of Deeds of Pasig City, Rizal and the original of which is on file with the Register of Deeds of Las Piñas City, which consists of a total area of 363.6059 hectares located in Tindig ng Manga, Las Piñas City. For ready reference, a photocopy of said OCT No. 3053 is hereto attached as Annexes 'A' and 'A-1'.

4. Don Mariano Lopez de Leon had secured said OCT No. 3053, as follows:

a) On December 18-22, 1918, he had the land surveyed and PSU-16400 (SWU-6478) over 363.6059 hectares was prepared for him (Copy of the Survey Plan is made Annex 'B' hereof).

b) On August 22, 1921, the said plan was approved by the Director of Lands (Please refer to Plan).

c) On December 10, 1923, an Order was issued by the Court of First Instance of Rizal in Case 313, GLRO REC No. 21134, that Mariano Lopez de Leon, married to Isidra Gana Potenciano, both of legal age, Filipinos and residents of Biñan, P.I. is the owner in fee simple of certain land in said Province of Rizal as described in Plan PSU-16400 containing an area of 363.6059 hectares and that said land be registered in accordance with the Land Registration Act in the name of said Mariano Lopez de Leon, subject, however, to such encumbrances mentioned in Section 39 of said law as may be subsisting and to the claim of Conrado Potenciano that a portion of 113.8469 hectares of land described therein as donated in his favor (See OCT No. 3053).

d) On March 12, 1924, Decree No. 151422 was issued by Enrique Altavas, Chief of the General Land Registration Office.

e) On March 26, 1924, the said decree was received and transcribed at the Office of the Register of Deeds of Rizal and OCT 3053 was issued by the Register of Deeds based on said Decree.

f) On April 2, 1934, with the conformity of Don Mariano Lopez de Leon, an Order was issued by the Court of First Instance of Rizal in Case No. 375, GLRO Record 22200 that Conrado Potenciano married to Rufina Reyes y Almeda Carlos of Manila is the owner in fee simple of certain land situated in said Provinces of Rizal as described in Plan PSU 23132 containing an area of 113.8469.

5. The said OCT 3053 has never been cancelled and is still existing in the records of the Office of the Register of Deeds of Las Piñas City. Further, the Petitioners are likewise in possession of the Owner's Duplicate Certificate of said OCT No. 3053, which has not been encumbered, transferred or cancelled and is still valid and binding, entitled on its face to the regular presumption of validity.

6. However, there is a cloud on Petitioners' OCT No. 3053 consisting of Transfer Certificates of Title which had been subsequently issued and

presently existing in the files of the Register of Deeds of Las Piñas City, which cover certain portions of the land covered by the aforesaid OCT No. 3053, all of which clouds need to be quieted or removed and declared invalid, for which reason this Petition for Declaratory Relief or Quieting of Title under Rule 63 of the Rules of Court is being filed. These Transfer Certificates of Title ('TCT') have been issued in the name of Respondent NORMA C. ESPINOSA by the Office of the Register of Deeds of Las Piñas City, and which are more specifically described as follows:

TCT	AREA IN HECTARES	DATE ISSUED
S-17190	2.8714	17 November 1975
S-17189	0.1287	17 November 1975
TOTAL	3.0001	

The assessed value of the parcels of land covered by said TCT Nos. S-17190 and S-17189 is in the total amount of P2,400,000.00. And for ready reference, certified true copies of said TCT Nos. S-17190 and S-17189 are hereto attached as Annexes 'C' and 'D', respectively.

7. The settled rule in Philippine jurisdiction, is that, where several certificates of title are issued, the one of an earlier date shall prevail. Inasmuch as Petitioners have the earliest title (OCT No. 3053) issued in 1924, thus all certificates of title subsequent thereto over the whole or portions of the parcel of land covered by OCT No. 3053 are not valid.<sup>[3]</sup>

Attempts to serve appellee the summons and copy of the petition were unsuccessful, causing Deputy Sheriff Roberto T. Galing to file a Return<sup>[4]</sup> on October 4, 2006, stating that:

THIS IS TO CERTIFY that the Summons issued in the above-entitled case together with the petition and all annexes thereof was caused to be served by the undersigned Deputy Sheriff Roberto T. Galing on September 27, 2006 at No. 15, Margarita St., Magallanes Village, Makati City but failed and unavailing due to the fact the said address is vacant and the caretaker of the place, a certain Dominga Ganti told the undersigned the owner of the said place is a certain Mrs. Yu.

WHEREFORE, Sheriff's return of the Summons is hereby respectfully returned to the Honorable Court UNSERVED for the Court's record and information.

On November 16, 2006, the appellants filed a Manifestation,<sup>[5]</sup> stating that the supposed address of appellee to which the Deputy Sheriff served the summons was based on the address appearing in the Transfer Certificate of Title Nos. S-17189 and S-17190; that aside from the said address, appellee's whereabouts is unknown to the appellants; and that they would exert earnest efforts to locate the appellee so that the summons and other processes of the court may be served upon her.

On May 17, 2007, however, the court *a quo* dismissed the petition for failure to

prosecute, the court saying that it had given enough time for the appellants to locate the appellee and, despite the lapse of a period of time, they still failed to do so.

On May 30, 2007, appellants filed an Omnibus Motion (I) to Reconsider the Order dated May 17, 2007 and (II) to Serve Summons by Publication.<sup>[6]</sup> On June 29, 2007, the court *a quo* granted the Omnibus Motion, reinstating the petition and allowing the summons to be served by publication at the expense of the appellants.

On December 14, 2007, appellants moved to declare the appellee in default.<sup>[7]</sup> The motion was granted and appellee was declared in default in the Order dated December 17, 2007.<sup>[8]</sup>

Thereafter, appellants presented their evidence *ex parte*, before the Branch Clerk of Court, acting as a Commissioner. The evidence presented were survey plans, the Original Certificate of Title No. 3053 in the name of Mariano Lopez de Leon, General Land Registration Decree No. 151422, TCT Nos. 17189 and 17190 both in the name of Norma C. Espinosa, Report of Geodetic Engr. Regino Sobreviñas, Jr., and the Judicial Affidavits of Gen. Pacifico Lopez de Leon and Geodetic Engr. Regino Sobreviñas, Jr.

On September 9, 2008, the court *a quo* issued a Decision granting appellants' Petition for Quieting of Title. The court ruled:

The petitioners cited that respondent Espinosa's properties covered by TCT Nos. (17189) T-35043-A covering an area of 1,287 square meters and (17190) T-35044-A involving an area of 28,714 square meters overlap a portion of the property covered by OCT No. 3053. To support the same, the petitioners presented a lot sketch plan and a report both dated 14 February 2008 prepared by Geodetic Engineer Sobreviñas, Jr. disclosing that the above parcels of land 'are totally inside and part of plan Psu-16400' which appears in the title of the late Mariano Lopez de Leon. On account thereof, the petitioners consider their peaceful possession thereof being disturbed and threatened.

As far as the petitioners are concerned the cloud of doubt caused by the said titles of respondent Espinosa must be removed since the 'date of the original survey of Psu-16400 and the date of original registration of OCT No. 3053' are 'both earlier than the date of original survey and date of original registration of the lots and titles of Lots 12 & 13, (LRC) Psd-19896 covered by TCTs Nos. (S-17189) T-35043-A and (S-17190) T-35044-A.' This being so, they insist that they have a superior right over the properties in the name of respondent Espinosa.

In the absence of any opposition or contravening evidence from the herein respondent the averments of the petitioners against the latter will have to be taken as is. Although the sketch plan and report of Geodetic Engineer Sobreviñas, Jr. were obtained by the petitioners after they filed the present petition the Court will give them due weight. Suffice it to say, if not for the above recent documents the Court cannot have a clear

grasp of the claim of the petitioners against respondent Espinosa. Surely, they cannot just rely on what appears in, among others, OCT No. 3053 and the judicial affidavits presented by the petitioners to assail the subject titles issued in the name of the respondent.

Working for the petitioners is the fact that they complied with the required notice and publication requirements, including the other requisites to establish their claim. Of course, it need not be stressed that any false statement regarding the matter would readily subject them to, for one, a criminal action for perjury.

Moreso, the failure of the respondent to adduce evidence in her defense cannot help her cause. As already mentioned, the presence of a better right on the part of the petitioners limited only to the titles of the respondent subject hereof deserves weight and credence.

To be clear, the ruling herein cannot just apply to the entire parcel of land covered by OCT No. 3053 or give outright a declaration that the same is valid and duly existing as against anyone who is not a party herein. There are other cases involving the said original title that must be resolved based on the evidence obtaining therein and should not depend on the results of this uncontested proceeding.<sup>[9]</sup>

On January 6, 2009, the court issued a Certificate of Finality.<sup>[10]</sup> On motion of the appellants, the court *a quo* issued an Order<sup>[11]</sup> on January 30, 2009 directing the issuance of a writ of execution. On February 10, 2009, a Writ of Execution was issued.<sup>[12]</sup>

On April 17, 2009, appellee filed a Petition for Relief from Judgment with Prayer for Writ of Preliminary Injunction,<sup>[13]</sup> anchored on the following grounds:

I

PETITIONER COULD NOT POSSIBLY HAVE ANSWERED RESPONDENTS' PETITION, AND THUS FINAL JUDGMENT WAS EVENTUALLY ENTERED AGAINST HER WITHOUT HER HAVING PARTICIPATED IN ANY WAY IN THE PROCEEDINGS, BY REASON OF FRAUD, IN THAT:

- A. THE ADDRESS OF PETITIONER ALLEGED IN THE PETITION, WHERE PERSONAL SERVICE OF SUMMONS WAS ACCORDINGLY ATTEMPTED TO BE MADE UPON HER, IS NOT HER 'RESIDENCE' AS CONTEMPLATED UNDER SECTION 6, RULE 14 OF THE RULES OF COURT; AND
- B. THE PROCEDURES PRESCRIBED UNDER SECTIONS 8 AND 14, RULE 14 OF THE RULES OF COURT REGARDING PERSONAL AND SUBSTITUTED SERVICE OF SUMMONS WERE COMPLETELY IGNORED, IF NOT COMPLETELY DISREGARDED BY BOTH THE SHERIFF AND RESPONDENTS.