

FOURTEENTH DIVISION

[CA-G.R. SP NO. 86788, August 31, 2006]

**FRANCISCA ARGANA, PETITIONER-APPELLANT, VS. HON.
REGISTER OF DEEDS OF MUNTINLUPA CITY, RESPONDENT-
APPELLEE.**

D E C I S I O N

LAMPAS PERALTA, J.:

Assailed in this appeal is the Resolution dated June 25, 2004^[1] in Special Civil Action No. 03-034 of Branch 256, Regional Trial Court, Muntinlupa City which denied the complaint for "Mandamus" filed by petitioner-appellant Francisca Argana against respondent-appellee Register of Deeds, Muntinlupa City.

THE ANTECEDENTS

Petitioner-appellant Francisca Argana, wife of the late Bernardino C. Argana, filed with respondent-appellee Register of Deeds of Muntinlupa City an affidavit of self-adjudication which provided that petitioner-appellant, as the sole heir of Bernardino C. Argana who left no will and no debts, was entitled to his entire estate, including two (2) parcels of land covered by Transfer Certificates of Titles (TCTs) Nos. 138290 and 138291 in the name of Bernardino C. Argana. After petitioner-appellant presented the owner's duplicate copy of TCT No. 138290 to respondent-appellee, the latter cancelled the title and issued a new one in the name of petitioner-appellant. However, respondent-appellee refused to cancel TCT No. 138291 and issue the corresponding new title since petitioner-appellant failed to submit the owner's duplicate copy of said title.

The factual findings are summarized in the trial court's Resolution dated June 25, 2004 as follows:

On June 2, 1999, petitioner submitted to the respondent a document entitled "Affidavit of Self Adjudication" dated March 22, 1999. Accompanying the affidavit were the official receipt no. 6512447 F issued by respondent's office, official receipt no. 3836504 F issued by the City of Muntinlupa, Termination Letter, dated April 30, 1999 issued by the Bureau of Internal Revenue, Makati City Branch Office, stating that the "report of investigation covering estate (1998) tax for the year has already been approved by the office, Letter of Confirmation dated April 30, 1999 which was issued by the Regional Director of the Bureau of Internal Revenue confirming the issuance of the termination letter, Estate Tax Return (BIR Form No. 1801) for Bernardino Argana and a Tax Clearance Certificate issued by the Bureau of Internal Revenue District No. 053. The tax clearance certificate attested that "all internal revenue taxes due for the purpose of transferring real property have been settled

as of May 12, 1999” and it mentioned a parcel of residential land covered by Transfer Certificate of Title No. 138291 located at Putatan, Muntinlupa City with an area of 382.50 square meters. When petitioner submitted all the documents to the respondent, she was told that a new title covering the said lot would be issued to her by the respondent. However, respondent refused and failed to issue the desired new title in the name of the petitioner despite the fact that petitioner through his retained counsel wrote a demand letter to respondent. Despite the lapse of more than four years, respondent has not complied with his duty to release or issue a new title in favor of the petitioner.^[2]

Hence, petitioner-appellant filed with the trial court a complaint for mandamus^[3] against respondent-appellee pursuant to Rule 65, 1997 Rules of Civil Procedure, alleging that upon petitioner-appellant’s submission of an affidavit of self-adjudication and tax clearance certificate, respondent-appellee must issue a new title over the subject property covered by TCT No. 138291.

Respondent-appellee filed his comment,^[4] alleging that he cannot issue a new certificate of title since petitioner-appellant failed to present the owner’s duplicate copy of TCT No. 138291 as required under Section 53 of Presidential Decree No. 1529. Also, the complaint violated the rule against forum shopping.

After the parties submitted their respective memoranda, the trial court issued a Resolution dated June 25, 2004 denying the complaint for mandamus for lack of merit.^[5]

Hence, petitioner-appellant filed the present appeal and the parties were required to submit their respective memoranda pursuant to Section 10, Rule 44, 1997 Rules of Civil Procedure. In her memorandum, petitioner-appellant raised the following argument:

The court a quo erred in dismissing Special Civil Action No. 03-034.

The court a quo may compel the Respondent-Appellee to issue a new certificate of title in favor of Petitioner-Appellant in lieu of TCT No. 138291.^[6]

On the other hand, respondent-appellee raised in her memorandum an additional issue of:

II

WHETHER OR NOT THE FILING OF THE INSTANT PETITION AMOUNTED TO OR CONSTITUTED THE DEPLORABLE ACT OF FORUM SHOPPING.^[7]

ISSUES

(1) Whether respondent-appellee may be compelled by mandamus to cancel TCT No. 138291 and issue a new title even though petitioner-appellant failed to surrender the owners’ duplicate copy of said title; and,

(2) Whether the complaint for mandamus violated the rule against forum shopping.

THE COURT'S RULING

Petitioner-appellant contends that the trial court erred in denying her complaint for mandamus against respondent-appellee since the surrender of the owner's duplicate copy of the title sought to be cancelled is not an absolute requirement in the issuance of a new title.^[8]

The contention is bereft of merit.

Basic is the doctrine that the remedy of mandamus lies to compel the performance of a ministerial duty^[9] and should only be issued when the right to the particular act sought to be compelled is clear and unmistakable.^[10] As Section 3, Rule 65, 1997 Rules of Civil Procedure provides:

SEC. 3. Petition for mandamus. – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent. (*Underlining supplied*)

It is alleged in the affidavit of self-adjudication executed by petitioner-appellant that as sole heir of Bernardino Argana who left no will and no debts, petitioner-appellant was entitled to his entire estate^[11] which included the parcels of land covered by TCT No. 138290 and the subject TCT No. 138291. It was on the basis of said affidavit of self-adjudication and upon petitioner-appellant's presentation of the owner's duplicate copy of TCT No. 138290 that respondent-appellee cancelled TCT No. 138290 and issued a new title in her name. However, it was her failure to present the owner's duplicate copy of TCT No. 138291 that respondent-appellee denied to cancel the same and issue a new title in her name.

Respondent-appellee cannot be said to have unlawfully neglected the performance of his legal duty as Register of Deeds when he refused to cancel TCT No. 138291 and issue a new one in the name of petitioner-appellant, as he was precisely observing the essential requirements for the entry of a new certificate of title as provided in PD No. 1529, otherwise known as the Property Registration Decree.

The presentation of the owner's duplicate copy of the title as a requirement for the registration of a voluntary instrument and entry of a new certificate of title, is expressly provided in PD No. 1529. Thus: