

## THIRD DIVISION

[ G.R. No. 233821, June 14, 2021 ]

**LOLITA JAVIER AND JOVITO CERNA, PETITIONERS, VS.  
DIRECTOR OF LANDS, RESPONDENT.**

### DECISION

**LEONEN, J.:**

Estoppel by laches had already set in when respondent raised the issue of lack jurisdiction for the first time on appeal, after the lapse of 42 years from its filing of petition, and only after the trial court ruled against it twice.

This Petition for Review on Certiorari<sup>[1]</sup> assails the Decision<sup>[2]</sup> and July 26, 2017 Resolution<sup>[3]</sup> of the Court of Appeals, which reversed and set aside the March 8, 2010 Judgment<sup>[4]</sup> and February 28, 2013 Order<sup>[5]</sup> of the Regional Trial Court.

On August 20, 1971, the Director of Lands filed a petition before the Court of First Instance of Mati, Davao Oriental for the adjudication of title to a land,<sup>[6]</sup> specifically described as follows:

A tract of land containing an area of 2,540.5667 hectares more or less divided into 1,079 lots situated in the Municipality of Lupon, Province of Davao, Philippines, the same being designated as Lupon Cadastre, Cad-353-D, Case 1.<sup>[7]</sup>

On June 25, 1974, the siblings Lolita Javier (Javier) and Jovito Cerna (Cerna) filed their respective Answers asserting ownership over portions of the Lupon Cadastre, specifically Lot No. 3541 with an area of 71,167 square meters. Javier claimed Lot No. 3541-A with an area of 22,743 square meters, while Cerna claimed Lot No. 3541-B with an area of 48,424 square meters.<sup>[8]</sup>

On January 28, 2005, Javier and Cerna filed a Motion to Set Case for Hearing before the Regional Trial Court of Lupon, Davao Oriental.<sup>[9]</sup> Javier and Cerna alleged that per the Certification of the Regional Trial Court of Mati, Davao Oriental issued on October 4, 1983, they were the only ones who filed their Answers to the cadastral proceedings and no hearing had been set for the adjudication of their claims.<sup>[10]</sup>

In a February 16, 2005 Order, the Regional Trial Court set the case for initial hearing on April 19, 2005 at 8:30 a.m.<sup>[11]</sup> At the hearing, Provincial Prosecutor Neil C. Pudpud appeared for the Office of the Solicitor General.<sup>[12]</sup>

On August 1, 2006, Javier, as the lone witness, testified that: (1) her father Ignacio Cerna, Sr. was the original claimant of Lot No. 3541; (2) while still alive, he donated the lot to her and her brother Cerna, through a Donation *Inter Vivos* dated April 30,

1974; and (3) since then, Javier and Cerna occupied, cultivated, declared for tax purposes, and subdivided their respective lots.<sup>[13]</sup>

On September 4, 2006, the Regional Trial Court issued an Order admitting the documentary evidence offered by Javier and Cerna, and submitted the case for decision.<sup>[14]</sup> However, on November 8, 2006, the trial court issued a Clarificatory Order setting aside its September 4, 2006 Order and authorizing Javier and Cerna to hire a geodetic engineer to conduct a partition survey of the lot in accordance with their Extrajudicial Agreement of Partition subject to the approval of the Land Management Services of the Department of Environment and Natural Resources.<sup>[15]</sup>

Thereafter, Javier and Cerna submitted a duly approved subdivision survey over Lot No. 3541,<sup>[16]</sup> and moved that Lot No. 3541 be adjudicated in their favor.<sup>[17]</sup>

On March 8, 2010, the Regional Trial Court issued its Judgment<sup>[18]</sup> adjudicating Lot-No. 3541 to Javier and Cerna, upon finding that the motion was fully substantiated and for failure of the government to oppose or present evidence to oppose the motion,<sup>[19]</sup> thus:

WHEREFORE, Premises Considered, Lot No. 3541, Cad. Case No. N-42, LRC Reg. No. N-575, Lupon Cadastre is hereby adjudicated, with all the improvements thereon, to movants Lolita C. Javier, widow, a resident of 464 2, Guerero St., Davao City and Jovita R. Cerna, married to Matilda Estipona-Cerna, and a resident of Cabuyao, Laguna, Philippines.

The roads, highways, alleys, streets, water courses and other parcel of the land not specified as lots, located within the borders of the aforementioned lots are hereby declared to be the properties of the Republic of the Philippines.

The Land Registration Authority is hereby ordered, after this judgment shall have become final and executory of which it shall be duly advised by a specific order by this court, to issue separate Decree of Registration of Title to movants of Lot No. 3541 in the following manner:

1. Lot No. 3541-A with all the improvements thereon containing an area of 22,864 square meters to be adjudicated in favor of Lolita C. Javier; and
2. Lot No. 3541-B with all the improvements existing thereon containing an area of 48,303 square meters is adjudicated in favor of Jovito R. Cerna.

SO ORDERED.<sup>[20]</sup>

On March 31, 2010, the Office of the Solicitor General filed a Motion for Reconsideration alleging that the trial court violated the State's constitutional right to due process, as it was not served copies of the pleadings, motions, records or notices, and it was not given a chance to participate in the proceedings.<sup>[21]</sup>

On February 28, 2013, the Regional Trial Court denied the motion for reconsideration.<sup>[22]</sup> The trial court stated that the Office of the Solicitor General was furnished with every copy of the pleadings and motions filed by Javier and Cerna, as

evidenced by registry receipts, as well as every court orders, notices, and processes.<sup>[23]</sup> The trial court likewise pointed out that the Provincial Prosecutor, as the Office of the Solicitor General's representative, actively participated during the hearings.<sup>[24]</sup>

On March 26, 2013, the Office of the Solicitor General filed an Appeal questioning the trial court's jurisdiction to hear the case for the alleged failure Javier and Cerna to prove the publication of the Notice of Initial Hearing in the Official Gazette.<sup>[25]</sup> Moreover, Javier and Cerna allegedly failed to prove possession in the manner required by law.<sup>[26]</sup>

On April 10, 2013, the trial court gave due course to the appeal and elevated the case records and documentary evidence to the Court of Appeals.<sup>[27]</sup>

On May 31, 2017, the Court of Appeals granted<sup>[28]</sup> the appeal and held that the trial court lacked jurisdiction to pass upon LRC Cad. Rec. No. N-575, Cadastral Case No. N-42.<sup>[29]</sup> The Court of Appeals found that Javier and Cerna failed to prove compliance with the publication requirement and that the trial court was vested with jurisdiction, when they filed their Motion to Set Case for Hearing on January 28, 2005, or 30 years after they filed their Answer.<sup>[30]</sup> The Court of Appeals dismissed Javier and Cerna's defense that the Notice of Initial Hearing dated December 10, 1973 was published twice in the Official Gazette, and rejected the belatedly submitted certifications of publication because of failure to offer them as evidence.<sup>[31]</sup> The dispositive portion of its Decision reads:

**WHEREFORE**, premises considered, the appeal is **GRANTED**. The Judgment dated March 8, 2010 and Order dated February 28, 2013 of the Regional Trial Court, Branch 32, Lupon, Davao Oriental are **SET ASIDE**. Let a new judgment be issued **DISMISSING** LRC Rec. No. N-575, Cadastral Case No. N-42, Lot 3451 for lack of jurisdiction.

**SO ORDERED.**<sup>[32]</sup> (Emphasis in the original)

In a July 26, 2017 Resolution,<sup>[33]</sup> the Court of Appeals denied the motion for reconsideration filed by Javier and Cerna.

Subsequently, Javier and Cerna filed before this Court a Petition for Review on Certiorari dated September 20, 2017.<sup>[34]</sup> In a December 4, 2017 Resolution,<sup>[35]</sup> this Court required respondent Director of Lands to file a comment. Thus, respondent, through the Office of the Solicitor General, filed its Comment<sup>[36]</sup> on February 20, 2018.<sup>[37]</sup> Meanwhile, petitioners filed their Reply on March 15, 2017.<sup>[38]</sup>

Petitioners assert that the jurisdictional requirement of publication of the Notice of Initial Hearing referred to in Section 7 of Act No. 2259 was already complied with as early as 1974.<sup>[39]</sup> They argue that the February 16, 2005 Order was not the notice of initial hearing and the Court of Appeals seriously erred in ruling that the publication requirement extends to subsequent notices of hearing.<sup>[40]</sup> Thus, petitioners allege that the Court of Appeals erred in declaring lack of jurisdiction for the trial court, because of petitioners' failure to present proof of publication of the Notice of Initial Hearing in the Official Gazette.<sup>[41]</sup>

Petitioners further claim that *Spouses Tan Sing Pan v. Republic*<sup>[42]</sup> is not applicable in this case, because of the different facts involved. Further, the quoted portion in the assailed Decision did not accurately reflect the reasoning of the Court.<sup>[43]</sup> Petitioners argue that the duty to ensure compliance with publication lies with the government, and the government cannot belatedly claim lack of notice and publication, considering that it was the Director of Lands, through the Office of the Solicitor General, who initiated the cadastral proceedings, and they were served copies of all records of the proceedings.<sup>[44]</sup>

Petitioners claim that the Court of Appeals erred in not taking judicial notice of the records submitted before it, and this Court should give weight to the documents proving jurisdictional requirement of publication as these form part of the official records of the trial court.<sup>[45]</sup>

On the other hand, respondent argues that the decision of the Court of Appeals is correct. Respondent claims that petitioners only submitted the purported Notice of Initial Hearing and its publication in the Official Gazette as annexes in their Appellee's Brief, and they were not offered as evidence before the trial court.<sup>[46]</sup> Respondent further points out that petitioners only filed a Motion to Set Case for Hearing on January 26, 2005, or 30 years from the time they filed their Answers in 1974.<sup>[47]</sup>

In their Reply, petitioners reiterate the arguments they raised in their Petition.<sup>[48]</sup>

The sole issue for resolution is whether or not the Court of Appeals erred in finding that the trial court had no jurisdiction to adjudicate the cadastral case for failure of petitioners Lolita Javier and Jovito Cerna to show proof of publication of the Notice of Initial Hearing.

We grant the Petition.

## I

An offspring of the Torrens System, the Cadastral System, established by Act No. 2259, aims to serve public interest by requiring titles to any lands be "settled and adjudicated[,]"<sup>[49]</sup> and by decreeing land titles to be "final, irrevocable, and indisputable."<sup>[50]</sup> Under the Cadastral System, titles for all the land within a stated area are adjudicated, regardless of whether people living within the area desire to have titles issued, pursuant to the Government's initiative.<sup>[51]</sup> The process of cadastral proceeding is explained in *Government of the Philippine Islands v. Abural*:<sup>[52]</sup>

The proceedings are initiated by a notice of survey. When the lands have been surveyed and plotted, *the Director of Lands, represented by the Attorney General, files a petition in court praying that the titles to the lands named be settled and adjudicated. Notice of the filing of the petition is then published twice in successive issues of the Official Gazette in both the English and Spanish languages.* All persons interested are given the benefit of assistance by competent officials and are informed of their rights. A trial is had: "All conflicting interests shall be adjudicated by the court and decrees awarded in favor of the persons entitled to the lands or the various parts thereof, and such decrees; when final, shall be

the bases .of original certificates of title in favor of said persons." (Act No. 2259, Sec. 11.) Aside from this, the commotion caused by the survey and a trial affecting ordinarily many people, together with the presence of strangers in the community, should serve to put all those affected on their guard.

After trial in a cadastral case, three actions are taken. The first adjudicates ownership in favor of one of the claimants. This constitutes the decision — the judgment — the decree of the court, and speaks in a judicial manner. The second action is the declaration by the court that the decree is final and its order for the issuance of the certificates of title by the Chief of the Land Registration Office. Such order is made if within thirty days from the date of receipt of a copy of the decision no appeal is taken from the decision. This again is judicial action, although to a less degree than the first.

The third and last action devolves upon the General Land Registration Office. This office has been instituted "for the due effectuation and accomplishment of the laws relative to the registration of land." (Administrative Code of 1917, Sec. 174.) All official found in the office, known as the chief surveyor, has as one of his duties "to prepare final decrees in all adjudicated cases." (Administrative Code of 1917, Sec. 177.) This latter decree contains the technical description of the land and may not be issued until a considerable time after the promulgation of the judgment. The form for the decree used by the General Land Registration Office concludes with the words: "Witness, the Honorable (name of the judge), on this the (date)." The date that is used as authority for the issuance of the decree is the date when, after hearing the evidence, the trial court decreed the adjudication and registration of the land.

The judgment in a cadastral survey, including the rendition of the decree, is a judicial act. As the law says, the judicial decree when final is the base of the certificate of title. The issuance of the decree by the Land Registration Office is ministerial act.<sup>[53]</sup> (Emphasis supplied)

The government, through the Director of Lands, initiates a cadastral case by filing a petition compelling all claimants of lands within a stated area to litigate against one another, in order to settle as much as possible all disputes over land and to remove all clouds over land titles. Notice of the filing of the petition is published in the Official Gazette compelling all claimants to present their answers so as not to lose their right to own their property. After conflicting claims are presented during trial, the court adjudicates ownership in favor of one of the claimants and orders the issuance of the decree of registration, which becomes the basis for the issuance of a certificate of title upon finality of the decision.<sup>[54]</sup>

In *Spouses Tan Sing Pan v. Republic*,<sup>[55]</sup> this Court emphasized that the publication requirement must be complied with for the court to acquire jurisdiction in cadastral cases, thus:

To be sure, publication of the Notice of Initial Hearing in the Official Gazette is one of the essential requisites for a court to acquire jurisdiction in land registration and cadastral cases, and additional