

## SECOND DIVISION

[ G.R. No. 173210, April 24, 2009 ]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. MACARIA L. TUASTUMBAN, RESPONDENT.**

### D E C I S I O N

**TINGA, J.:**

This is a petition for review under Rule 45 of the Rules of Court assailing the Amended Decision<sup>[1]</sup> dated 23 June 2006 of the Court of Appeals in CA-G.R. CV No. 71071 entitled "*Macaria L. Tuastumban v. Republic of the Philippines*" which granted respondent Macaria L. Tuastumban's Motion for Reconsideration of its earlier Decision<sup>[2]</sup> dated 20 February 2006 and thereby affirmed with modification the Judgment<sup>[3]</sup> dated 11 December 2000 of the Regional Trial Court (RTC) of Cebu City, Branch 5. Said judgment granted respondent's petition for the reconstitution of a lost Original Certificate of Title (OCT).

On 8 November 1999, respondent filed a petition for reconstitution of the OCT covering Lot No. 7129, Flr-133, Talisay-Minglanilla Estate under Patent No. 43619 in the name of the Legal Heirs of Sofia Lazo, with a total land area of approximately 3,633 square meters. The OCT which was in the possession of the Register of Deeds of the Province of Cebu was allegedly either lost or destroyed during World War II. Respondent anchored her petition for reconstitution on Sec. 2(d) of Republic Act No. 26<sup>[4]</sup> (R.A. No. 26) which provides that an original certificate of title may be reconstituted from an authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued.

The RTC found the petition to be sufficient in form and substance and set the hearing of the petition on 29 March 2000. The RTC also directed the Branch Clerk of Court to publish a copy of the Notice of Hearing in the Official Gazette and to send copies thereof to the owners of the adjoining properties of Lot No. 7129, respondent's counsel, the Solicitor General, the Administrator of the Land Registration Authority and the Register of Deeds of Cebu Province.

On the scheduled hearing, the Branch Clerk of Court announced three times in open court to find out if there was any opposition to the petition. There being none, the court proceeded to receive respondent's exhibits to establish the jurisdictional facts. Thereupon, the RTC proceeded to try the case.

According to the Certification by the Community Environment and Natural Resources Office (CENRO) of Cebu City, Lot No. 7129 was granted to the heirs of Sofia Lazo via Patent No. 43619 issued on 21 July 1938. Respondent claims she bought the property from the said owners who are also her relatives, as evidenced by an *Extrajudicial Declaration of Heirs with Waiver of Inheritance Rights and Deed of Absolute Sale*. She claims that since the time of purchase, she has been occupying

and possessing the land and paying the realty taxes thereon. Respondent prayed for reconstitution of the title covering the property since the title, supposedly on file and under the custody of the Register of Deeds of Cebu Province, had either been lost or destroyed during World War II as certified by said office. Cebu City Prosecutor Edilberto Ensomo, representing the Office of the Solicitor General, did not present any evidence against respondent.

Thus, on 11 December 2000, the RTC rendered its decision, the dispositive portion of which reads:

WHEREFORE, the Register of Deeds, Province of Cebu is hereby ordered to reconstitute the lost Original Certificate of Title covering Lot No. 7129, Flr-133, Talisay-Minglanilla Estate, in the name of the Legal Heirs of Sofia Lazo based on Patent No. 43619 issued on 21 July 1938 by the Department of Environment and Natural Resources, Community Environment and Natural Resources Office, Cebu City, upon payment of the required fees.

Furnish copies of this Judgment to the Register of Deeds, Province of Cebu, the Administrator of the Land Registration Authority, the Office of the Solicitor General, Makati and counsel of the petitioner.

SO ORDERED.<sup>[5]</sup>

Petitioner interposed an appeal with the Court of Appeals which, on 20 February 2006,<sup>[6]</sup> granted the same and reversed the RTC judgment. The appellate court held that no proper reconstitution can be done since respondent did not utilize the sources of reconstitution provided under Sec. 2<sup>[7]</sup> of R.A. No. 26 in the order therein stated, merely presenting as it did a Certification from the CENRO that a patent had been issued over Lot No. 7129 in the name of the heirs of Sofia Lazo.

As found by the CA, respondent based her petition for reconstitution on the following documents: (a) Extrajudicial Declaration of Heirs with Waiver of Inheritance Rights and Deed of Absolute Sale dated 19 July 1999;<sup>[8]</sup> (b) CENRO Certification dated 31 May 1999 that Lot No. 7129 is patented in the name of the Legal Heirs of Sofia Lazo;<sup>[9]</sup> (c) Register of Deeds Certification dated 31 May 1999 that no certificate of title covering Lot No. 7129 was issued in the name of the legal heirs of Sofia Lazo and that all deeds/records were either burned or lost during the last World War;<sup>[10]</sup> (d) Tax Declaration covering Lot No.7129 in the name of respondent;<sup>[11]</sup> (e) Blue Print of Advance Plan of Lot No. 7129;<sup>[12]</sup> (f) Technical Description of Lot No. 7129;<sup>[13]</sup> and (g) Real Property Tax Clearance.<sup>[14]</sup>

The CA held that respondent's proffered evidence fall under Sec. 2(f) of R.A. 26 which pertains to "any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title." Resort to the sources under Sec. 2(f) is justified only when the sources under Secs. 2(a) to (e) are unavailable. Respondent, though, had failed to lay the basis to warrant consideration of sources under Sec. 2(f). There was no proof of loss of the best source for reconstitution which is the owner's duplicate copy of the certificate of title; therefore, the succeeding sources for reconstitution cannot validly be considered.

However, upon a motion for reconsideration filed by respondent, the Court of Appeals in its Amended Decision of 23 June 2006 reversed itself and held that respondent has substantially complied with the requirements for reconstitution under RA 26.

The Court of Appeals traced the ownership of Lot No. 7129 based on the records of the Bureau of Lands, Friar Lands Division, now the CENRO of the DENR. It found that: The property was part of the Talisay-Minglanilla Friar Lands Estate covered by one mother title, OCT No. 188. Under Act No. 1120 or the Friar Lands Act, the whole estate was purchased by the Government of the Philippines and portions thereof were sold by installment to actual possessors. One such possessor was Sofia Lazo who was granted Sales Patent No. 43619 on 21 July 1938. This led to the issuance by the Philippine Government of a Deed of Conveyance which led to the issuance by the Register of Deeds of a transfer certificate of title (TCT) in favor of the Heirs of Sofia Lazo, and not an original certificate of title as claimed by respondent.

The Court of Appeals noted that aside from the CENRO Certification, blue print of Advance Plan and Technical Description of Lot No. 7129, respondent also offered in evidence a Report<sup>[15]</sup> from the Administrator of the Land Registration Authority (LRA) which indicated that:

(2) The entire Talisay-Minglanilla Estate, Flr-133 of which Lot 7129 is a portion, appears in the records of this Authority to have been applied for registration of title in Court of Land Registration Case No. 3732 for which Decree No. 2787 was issued on 15 July 1908;

(3) The plan and technical description of Lot 7129, Talisay-Minglanilla Estate, Flr-133, were verified correct by this Authority to represent the aforesaid lot and the same have been approved under (LRA) PR-18379 pursuant to the provisions of Section 12 of Republic Act No. 26.

WHEREFORE, x x x, the plan and technical description having been approved, may be used as basis for the inscription of the technical description on the reconstituted certificate. Provided, however, that no certificate of title covering the same parcel of land exists in the office of the Register of Deeds concerned.<sup>[16]</sup>

The CA believed that these government records as duly certified and reported by the CENRO and the LRA uphold the prior existence of a certificate of title in favor of the Heirs of Sofia Lazo over Lot No. 7129. Since the Register of Deeds had already certified that no such copy of the title exists in its records, coupled with the fact that there were no private oppositors or claimants to the petition for reconstitution and the failure of herein petitioner Republic of the Philippines, represented by the Cebu City Prosecutor, to present any evidence against respondent or to object to any of respondent's offer of evidence, the Court of Appeals concluded that reconstitution should issue. Respondent's alleged failure to prove the loss of the owner's duplicate certificate of title was held to be justified by petitioner's failure to deny or oppose the allegation. As the allegation of loss was never specifically denied, the averment in respondent's petition was deemed admitted without need of evidence to prove the same. Thus, respondent properly resorted to the sources of reconstitution under Sec. 2(f) of R.A 26. The CA added that petitioner's objections were belatedly raised

in the appeal before the appellate court and should be barred.

Thus, the *fallo* of the Amended Decision reads:

WHEREFORE, premises considered, petitioner-appellee's Motion for Reconsideration is GRANTED. Thus, Our Decision dated 20 February 2006 is RECONSIDERED. Accordingly, the RTC Judgment dated 11 December 2000 is AFFIRMED WITH MODIFICATION that what is to be reconstituted is the lost Transfer Certificate of Title, and not Original Certificate of Title, over Lot No. 7129 in favor of the Legal Heirs of Sofia Lazo.

SO ORDERED.

In this petition for review, petitioner alleges that the Court of Appeals erred in reversing its 20 February 2000 Decision considering the lack of legal and factual bases for the reconstitution. It argues that:

- (1) The presentation of the required documents under Sec. 2, RA 26 is mandatory and jurisdictional and non-compliance therewith is fatal.
- (2) The loss of the owner's duplicate copy of the alleged lost or destroyed certificate of title was not duly established.
- (3) There was no factual or legal bases for reconstitution as there was no proof presented showing that a certificate of title covering Lot No. 7129 had been previously issued.<sup>[17]</sup>

Petitioner argues that the Certification from the CENRO presented by respondent is insufficient because Sec. 2(d) of RA 26 explicitly requires an authenticated copy of the decree of registration or patent pursuant to which the original certificate of title was issued. What must be presented is an authenticated copy of the decree or registration patent and not a mere certification that the patent has been issued. The certification is mere hearsay especially since the issuing authority, a mere Records Officer I, was not even presented in court to identify the certification.

Petitioner also points out that respondent, during her testimony, made no mention of the owner's duplicate copy of the alleged lost certificate of title, which is the best source for reconstitution. Neither was there executed any affidavit of loss attesting to the circumstances of the loss of said owner's duplicate copy. The tax declaration presented by respondent cannot also be relied on since it is settled that tax declarations or realty tax payments are not conclusive evidence of ownership.

Petitioner also assails the Certification by the Register of Deeds of Cebu. The Certification, it is claimed, belies the fact that a certificate of title covering the subject property was issued prior to its loss since said Certification simply states that "according to the records of this office x x x no certificate of title covering Lot No. 7129, Flr-133, Talisay-Minglanilla Estate, Cebu, was issued in the name of and/or as claimed to be owned by the Legal Heirs of Sofia Lazo" and that "all deeds/records were either burned or lost during the last World War."

Petitioner concludes that since there was no evidence presented showing that an OCT or TCT had been issued prior to its alleged loss, there can be no legal or factual basis for its reconstitution. While there were certifications, technical descriptions and

tax declarations presented, these are insufficient bases under RA 26. Respondent also did not make any reference to an OCT or TCT number but merely repeatedly mentioned an "original certificate of title covering Lot No. 7129."

The issue at bar is whether the documents presented by respondent constitute sufficient basis for the reconstitution of title to Lot No. 7129. We hold that respondent's evidence is inadequate.

The petition should be granted.

The governing law for judicial reconstitution of titles is R.A. No. 26. Sections 2<sup>[18]</sup> and 3<sup>[19]</sup> of RA 26 enumerate the sources upon which reconstitution should issue. Section 2 refers to source documents for reconstitution of the original certificate of title while Sec. 3 refers to sources for reconstitution of transfer certificates of title. The requirements of Secs. 2 and 3 are almost identical, referring to documents from official sources which recognize the ownership of the owner and his predecessors-in-interest.<sup>[20]</sup> In *Republic v. Intermediate Appellate Court*,<sup>[21]</sup> the Court ruled that "any other document" in Secs. 2(f) and 3(f) of RA 26 refers to documents similar to those previously enumerated therein, that is, those mentioned in Sections (a), (b), (c), (d) and (e). The Court reiterated this ruling in *Heirs of Dizon v. Hon. Discaya*<sup>[22]</sup> and *Republic v. El Gobierno de las Islas Filipinas*.<sup>[23]</sup> The documents alluded to in Secs. 2(f) and 3(f) must be resorted to in the absence of those preceding in order. If the petitioner for reconstitution fails to show that he had, in fact, sought to secure such prior documents and failed to find them, the presentation of the succeeding documents as substitutionary evidence is proscribed.<sup>[24]</sup>

In relation to the foregoing, Secs. 12<sup>[25]</sup> and 13<sup>[26]</sup> of RA 26 requires compliance with additional jurisdictional requirements. Section 15<sup>[27]</sup> thereof also provides when an order for reconstitution should issue.

From the foregoing, the following must be present for an order for reconstitution to issue: (a) that the certificate of title had been lost or destroyed; (b) that the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (c) that the petitioner is the registered owner of the property or had an interest therein; (d) that the certificate of title was in force at the time it was lost and destroyed; and (e) that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title.

The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred.<sup>[28]</sup> RA 26 presupposes that the property whose title is sought to be reconstituted has already been brought under the provisions of the Torrens System.<sup>[29]</sup>

Respondent anchored her petition for reconstitution on Sec. 2(d) of RA 26. Respondent however failed to present an authenticated copy of the decree of