

THIRD DIVISION

[G.R. No. 176441, June 17, 2008]

HEIRS OF MARCELA NAVARRO REPRESENTED BY MARIO DACALOS, PETITIONERS, VS. WILLY Y. GO, RESPONDENT.

D E C I S I O N

YNARES-SATIAGO, J.:

This Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assails the August 17, 2006 Decision^[2] of the Court of Appeals in CA-G.R. CV No. 80294, setting aside the June 3, 2003 Order^[3] of the Regional Trial Court of Cebu, Branch 14, denying the petition for cancellation of OCT No. RO-3107 filed by herein respondent Go. Also assailed is the January 9, 2007 Resolution^[4] denying the Motion for Reconsideration.^[5]

The facts as found by the appellate court:

The respondents-appellees Dacaloses [herein petitioners] claim to be the legal heirs of the late Marcela Navarro who was married to Alipio Dacalos. Marcela Navarro owned Lot No. 4829 by virtue of a Decree of Adjudication (Decree No. 98427) issued to her on November 16, 1920 by the then Court of First Instance, now the Regional Trial Court (RTC), of the Province of Cebu.

Sometime in 1996, the respondents-appellees represented by Mario Dacalos, filed a petition for judicial reconstitution of title to Lot No. 4829, which lot is more particularly described as follows:

"A parcel of land (Lot No. 4829 of the Cadastral Survey of Cebu), with all buildings and improvements, except those herein expressly noted as belonging to other persons, situated in the Municipality of Cebu. Bounded on the NE, by Lots Nos. 4828 and 4837; on the SE, by Lot No. 3570; on the SW, by Lot No. 4628; and on the NW, by Lots Nos. 4630, 4818 and 4827. Beginning at the point marked "1" on plan, being S. 75 deg. 54'W., 499.97 m. from B.M. No. 56; thence N. 29 deg. 36'W., 38.48 m. to point "2", thence No. 60 deg. 39'E., 21.11 m. to point "3", thence N. 61 deg. 14'E., 21.26 m. to point "4"; thence N. 68 deg. 52'E., 19.77 m. to point "5"; thence S. 20 deg. 35'E., 13.40 m. to point "6"; thence S. 16 deg. 35'E., 13.63 m. to point "7"; thence S. 24 deg. 30'E., 12.52 m. to point "8"; thence S. 64 deg. 18'E., 55.78 m. to the point of beginning; containing an area of TWO THOUSAND THREE HUNDRED AND THIRTY SEVEN SQUARE METERS (2,337), more or less. All points referred to are indicated on the plan;

bearings true; declination 1 deg. 33'E., date of survey, December 1910 to February 1912."

The Dacaloses claim that the Original Certificate of Title (OCT), as well as the owner's copy of the OCT, to the subject parcel of land was destroyed during World War II. Their petition was docketed as Cad. Case L.R.C. Rec. No. 13 and raffled to Branch 14 of the RTC in Cebu City.

The court *a quo* ordered on February 6, 1996 the setting of the petition for hearing as well as the publication of the same in the Official Gazette. During the initial hearing on June 4, 1996, the Dacaloses offered certain documents as evidence of their compliance with the jurisdictional requirements. Since no opposition to the petition was filed by the adjacent lot owners and by the concerned government agencies which were duly notified, the court *a quo* allowed the Dacaloses to present their evidence *ex parte*.

On July 2, 1996, the court *a quo* granted the petition and disposed the case in this wise:

"WHEREFORE, given the foregoing facts which the petitioners have succeeded in establishing, the instant petition is hereby granted.

Accordingly, the Court hereby -

(1) Directs the Register of Deeds of Cebu City to reconstitute the Original Certificate of Title covering Lot No. 4829 of the Cebu Cadastre, located in Cebu City, in the name of the registered owner MARCELA NAVARRO, the wife of Alipio Dacalos, on the basis of Decree No. 98427, marked as Exhibit F, and carrying the same encumbrances, liens and annotations, if there are any; and

(2) Directs the Register of Deeds of Cebu City, upon payment of the prescribed fees therefor, to issue the owner's duplicate of the reconstituted certificate of title covering Lot No. 4829.

SO ORDERED."

By reason of the court *a quo*'s order, the Office of the Register of Deeds for the City of Cebu issued a reconstituted copy of the original title to Lot No. 4829 (OCT No. R-3107) in the name of Marcela Navarro, married to Alipio Dacalos.

On December 1, 1997, petitioner-appellant Willy Go (Go for brevity) [herein respondent] sought from the same trial court the nullification of the reconstituted titled issued to Marcela Navarro alleging that the same is null and void. According to Go, he is the actual possessor of the subject lot and the court *a quo* did not acquire jurisdiction over the Dacaloses' petition because the latter failed to notify him about their petition, in violation of Section 13 of Republic Act No. 26. Petitioner-appellant Go likewise claimed that the lot involved is already covered by an existing title (TCT No. 6807).

In an order dated June 3, 2003, the court *a quo* denied Go's petition for cancellation of title. Go sought for a reconsideration of the said order but the same was denied for lack of merit by the court *a quo* on June 26, 2003. x x x^[6]

Respondent appealed to the Court of Appeals which rendered the assailed Decision, the decretal portion of which reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the appeal filed in this case and SETTING ASIDE the assailed order issued by Regional Trial Court, Branch 14, in Cebu City in Cad. Case L.R.C. Rec. No. 13. The proceedings in L.R.C. No. 13 as well as the reconstituted OCT No. R-3107 are hereby declared as NULL AND VOID.

SO ORDERED.^[7]

The Court of Appeals ruled that the reconstitution proceedings is void for lack of notice to respondent who was in possession of the subject property. The appellate court concluded that petitioners wantonly disregarded the basic requirements of due process, specifically, Sections 12 and 13 of Republic Act No. 26.^[8]

Petitioners filed a Motion for Reconsideration but it was denied on January 9, 2007; hence, the instant petition based on the following ground:

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN GRANTING THE APPEAL AND IN SETTING ASIDE THE ASSAILED ORDER ISSUED BY THE REGIONAL TRIAL COURT, BRANCH 14, IN CEBU CITY IN CAD. CASE L.R.C. REC. NO. 13 ON THE BASIS OF LACK OF JURISDICTION OF THE COURT A QUO OVER PETITIONERS DACALOS' PETITION FOR RECONSTITUTION BECAUSE OF LACK OF NOTICE TO THE ACTUAL OCCUPANT THEREOF, PRIVATE RESPONDENT GO, IN VIOLATION OF SECTION 12, OF REPUBLIC ACT NO. 26 AND FOR BEING IN VIOLATION OF THE BASIC REQUIREMENTS OF DUE PROCESS.^[9]

Petitioners allege that they have proven their right over the subject property as the legal and compulsory heirs of the late Marcela Navarro, the alleged registered owner thereof; that respondent failed to prove his right over the subject property; that respondent was a squatter or usurper of Lot No. 4829, hence, was not entitled to any notice in order for the trial court to acquire jurisdiction over the case; that while respondent claimed that Lot No. 4829 is covered by TCT No. 6807 under the name of Necitas Gabiana, he failed to present the original copy of the said title; that the alleged photocopy of said title appears spurious as the entries therein were virtually illegible; that the tax declaration certificates of Necitas Gabiana for the subject property were of dubious origin because they were based on the same ambiguous TCT No. 6807; that despite the lack of notice of the reconstitution proceedings, respondent was given the opportunity to prove his claim of ownership over the lot in controversy during the trial of his petition for cancellation of OCT No. RO-3107.

Respondent, in his Comment,^[10] alleges that his claim over Lot No. 4829 and the existence of TCT No. 6807, were duly established in the proceedings for the

cancellation of OCT No. RO-3107; that Antonio Abangan, a former clerk and junior appraiser at the Office of the City Assessor of Cebu City, testified that he cancelled Tax Declaration No. IV009764 in 1962 and issued Tax Declaration No. IV 009889 in the name of Nicetas Gabiana upon presentation to him of TCT No. 6807; that it was mentioned in the Decision of the Court of First Instance of Cebu in Civil Case No. R-7039^[11] that Lot No. 4829 was registered in the name of Nicetas Gabiana under TCT No. 6807; that vendors, Librada Tariman Ediza and Lourdes Tariman Suson, inherited the subject property from their grandfather, Nicetas Gabiana, and parents, Luisa Gabiana and Felixberto Tariman; and that in 1994, said vendors duly executed a Deed of Absolute Sale^[12] over Lot No. 4829 in his favor. Respondent also alleges that petitioners' allegation that he is a squatter on Lot No. 4829 was raised only for the first time in their Motion for Reconsideration of the Decision of the Court of Appeals. Finally, respondent notes that petitioners' Complaint^[13] against him for ejectment from the subject property was dismissed by Branch 1, MTCC-Cebu; and their appeal thereto was likewise denied by Branch 5, RTC-Cebu.^[14]

The petition lacks merit.

Reconstitution of a certificate of title, in the context of Republic Act No. 26, denotes the 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 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.^[15]

In order for a court to acquire jurisdiction over a petition for reconstitution of title, the following provisions of Republic Act No. 26 must be observed:

SEC. 12. Petitions for reconstitution from sources enumerated in sections 2(c), 2(d), 2(e), 2(f), 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 of 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 had 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) or 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