

## NINETEENTH DIVISION

[ CA-G.R. CV. NO. 03373, July 31, 2014 ]

**POCAHONTAS C. BEDIO, PETITIONER-APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR-APPELLANT.**

### DECISION

**LAGURA-YAP, J.:**

The present appeal seeks to nullify the October 29, 2009 *Decision*<sup>[1]</sup> issued by the Regional Trial Court, Branch 64, Guihulngan, Negros Oriental (RTC) in Cad. Case No. 09-01-C for *Re-issuance of the Lost Owner's Duplicate Copy*.

### THE ANTECEDENTS

The facts of this case are essentially undisputed:

Appellee alleged she is the custodian of the records of her grandparents, the late spouses Juan Cordero and Carmen Catahay-Cordero, who both died intestate. The said spouses are the registered owners of a real property with an area of 23.9891 hectares, covered by OCT No. (380) (HV-78) HV-61 ("OCT 380"). The property is free from all liens and encumbrances. Appellee kept the owner's duplicate copy of the certificate of title in her personal files, but it got lost. Despite diligent efforts, it could no longer be found. Appellee filed an *Affidavit of Loss*<sup>[2]</sup> before the Register of Deeds of Canlaon City.

On February 24, 2009, appellee filed<sup>[3]</sup> the instant case before the RTC praying that a new owner's duplicate copy of OCT 380 be issued.

Hearings were, thereafter, conducted.

On October 29, 2009, the RTC rendered the assailed *Decision*, the dispositive portion of which reads:

WHEREFORE, the office of the Register of Deeds of Canlaon City is hereby directed to issue a new Owner's Copy of OCT No. (380) (HV-87) HV-61 in the name of the registered owner, in favor of herein petitioner, after payment of the prescribed fees therefor.

SO ORDERED.

Hence, this appeal.<sup>[4]</sup>

On July 31, 2012, the *Brief for the Oppositor-Appellant*<sup>[5]</sup> was filed.

On October 1, 2012, *Appellee's Brief*<sup>[6]</sup> was filed.

On January 29, 2013, appellee filed the *Motion for Resolution*.<sup>[7]</sup>

On June 14, 2014, appellee filed the *Notice of Change of Address*.<sup>[8]</sup>

## ISSUE

### WHETHER APPELLEE FAILED TO COMPLY WITH THE REQUIREMENTS OF SECTION 109, PD 1529.

#### THE ARGUMENTS

Section 109 of PD 1529<sup>[9]</sup> provides that a petition for the re-issuance of the owner's duplicate of a certificate of title maybe filed by "*the registered owner or other person in interest.*" Appellant argues that the RTC should have dismissed the petition because appellee failed to show her interest in the property. She cannot be considered an interested person if she does not appear to be so in the original copy of the title on file with the Register of Deeds. Although, she alleged that she is the granddaughter of the registered owner, she failed to adduced evidence to prove this.

Appellant also argues that other interested persons were not notified of the proceeding, in violation of Section 109.

Appellee, for her part, did not squarely address the points raised by appellant. Instead, she argues that the instant case follow the rules on special proceedings where the filing of a record on appeal is a requirement for the perfection of an appeal. In this case, none was filed, thus, the appeal should be dismissed outright because it was never perfected.

Appellee also insists that she had presented evidences to warrant the issuance of a new duplicate certificate. Her testimony and that of her witness, and the affidavit she executed show that the certificate of title is now lost beyond recovery.

Finally, appellee points out that the instant case is merely for the re-issuance of a lost certificate of title, not a civil case which involves ownership of the land covered by it.

#### THE COURT'S RULING

The appeal is **MERITORIOUS**.

To start with, We do not agree with appellee that the filing of a record of appeal is necessary for the perfection of instant appeal.

For one, this case is not a special proceeding, contrary to her contention. A special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact.<sup>[10]</sup> In this case, appellee merely sought for the re-issuance of the certificate of title. This can no way be construed as seeking to establish a status, a right, or a particular fact.

For another, the filing of a record on appeal is no longer necessary as the RTC had

fully resolved all the issues in the present case. In *Marinduque Mining and Industrial Corporation and Industrial Enterprises, Inc. v. Court of Appeals and National Power Corporation*,<sup>[11]</sup> the Supreme Court held that no record on appeal shall be required, except in special proceedings and other cases of multiple or separate appeals where the law or the rules so require. The reason for multiple appeals in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the trial court and held to be final. In such case, the filing of a record on appeal becomes indispensable only when a particular incident of the case is brought to the appellate court for resolution with the rest of the proceedings remaining within the jurisdiction of the trial court. Hence, if the trial court has already fully and finally resolved all conceivable issues, then there is no reason why the original records of the case must remain with the trial court. Therefore, there was no need to file a record on appeal because the original records would already be sent to the appellate court.<sup>[12]</sup>

Going now to the main issue.

Section 109 of PD 1529, reads:

SEC. 109. *Notice and replacement of lost duplicate certificate.* — In case of lost or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the facts of such loss or destruction may be filed by the registered owner or other person in interest and registered.

Upon the petition of the registered owner or **other person in interest**, the court may, **after notice and due hearing**, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.

The above-quoted provision clearly allows a person who is not the owner of the property to file the petition for a new duplicate certificate, provided the person has interest in the property.

In this case, however, appellee failed to adduce evidence that she has an interest in the property. While she alleged that she is the granddaughter of the registered owners, she failed to establish this with sufficient evidence. Allegations are not proof. There must be corroborative evidence.<sup>[13]</sup> Unfortunately, appellee failed to present such evidence.

Moreover, Section 109, cited above, also requires that interested parties be notified of the petition. In *San Agustin v. Hon. Court Of Appeals*,<sup>[14]</sup> the Supreme Court held that notices should be made to those persons who have an interest in the property as shown in memorandum of encumbrances at the back of the certificate of title on file in the Register of Deeds, thus: