

## SEVENTH DIVISION

[ CA-G.R. CV NO. 82195, August 30, 2006 ]

**THE DIRECTOR OF LANDS, PETITIONER, REPUBLIC OF THE PHILIPPINES, APPELLANT, VS. LUCIANO ABIJERO, ET AL., CLAIMANTS, LOWELYN SANTOS, ET AL., CLAIMANTS/MOVANTS-APPELLEES.**

### DECISION

**VILLARAMA, JR., J.:**

This is an appeal from the Decision<sup>[1]</sup> dated June 26, 2003 of the Regional Trial Court of Laoag City, Branch 15 in Cad. Case No. 21-15, LRC Cad. Rec. No. 1153 (Lot No. 7220, Laoag Cadastre).

The factual antecedents:

Sometime in the 1930s, the Director of Lands instituted cadastral proceedings in the Municipality (now City) of Laoag, Province of Ilocos Norte. Among the claimants who filed their Answers by way of application for registration of title over Lot 7220, Laoag Cadastre were Modesta Santos and Dolores Llacuna.<sup>[2]</sup> In the year 1972 when the case was still being heard, Modesta Santos died, and was thereafter represented by Maria Santos.<sup>[3]</sup>

On May 4, 2000, herein Claimants-Movants, Lowelyn Santos, Milner Santos, Milandro Santos, Myrna Santos and Madelyn Santos filed a "Motion To Admit Answer in Substitution" as the surviving children of Jose Santos, nephew of Modesta Santos, the father of Jose Santos, Pablo Santos (also deceased) being the brother of Modesta. Veronica Santos, widow of Jose Santos, had waived all her rights and interests over the subject land in favor of her children, the aforementioned claimants.<sup>[4]</sup>

The case was set for hearing and notices thereof were personally served on the Claimants-Movants, their counsel and assistant city prosecutor.<sup>[5]</sup>

At the hearing held on November 8, 2000, Claimants-Movants presented their witness, Lowelyn Santos, who testified that the original claimant, Modesta Santos, the aunt of their father (Jose Santos), died single and without issue, survived only by her only brother Pablo Santos. Pablo Santos had two (2) children, namely, Jose Santos and Nicomedes Santos, both deceased. While Nicomedes Santos died single and without issue, Jose Santos and his wife Veronica begot children who are the present claimants in substitution of Modesta Santos. Documentary evidence was likewise submitted consisting of tax declarations in the name of Modesta Santos beginning the year 1949 up to 1994, and Certification issued by the Municipal Treasurer of non-delinquency in the payment of real estate taxes on the property. Finding the evidence sufficient, the trial court admitted the answer in substitution.<sup>[6]</sup>

Claimants-Movants formally offered their documentary evidence (Exhibits "A" to "C"), which was noted by the trial court after the State manifested that it interposes no objection to the same.<sup>[7]</sup> On November 23, 2001, the trial court directed the Claimants-Movants to manifest whether they are no longer presenting any additional evidence to support their claim.<sup>[8]</sup> There being no compliance with said order, the trial court on May 14, 2002 directed the Claimants-Movants to show cause why their claim should not be dismissed for failure to comply with the November 23, 2001 order.<sup>[9]</sup> In their Manifestation and Compliance dated May 17, 2002, Claimants-Movants stated that they will be presenting additional evidence.<sup>[10]</sup>

After several settings, Claimants-Movants again presented as witness Lowelyn Santos who testified on their alleged peaceful and uninterrupted possession of the subject lot. The testimony of another witness, Alfredo Juan, was dispensed with, considering the admission by the public prosecutor of the fact of possession and cultivation of the land by the Claimants-Movants and their predecessors-in-interest.<sup>[11]</sup> The same documentary exhibits were formally offered anew by the Claimants-Movants, and to which the public prosecutor interposed no objection. The trial court admitted the said exhibits and considered the case submitted for decision.<sup>[12]</sup> However, the Order dated February 3, 2003 submitting the case for decision was recalled as the court noted that another claimant, Dolores Llacuna, has never participated in the proceedings. The case was set for another hearing for the reception of evidence of said claimant.<sup>[13]</sup>

On motion by counsel for Claimants-Movants that Dolores Llacuna could not be located at her given address as per return of the process server, the case was submitted for decision on June 23, 2003.<sup>[14]</sup>

On June 26, 2003, the trial court rendered judgment<sup>[15]</sup> confirming the title of Claimants-Movants over the subject lot, as follows:

"The evidence, oral and documentary, thus presented, clearly and sufficiently established that the substituted claimants have been in open, public, peaceful, continuous, exclusive and notorious possession and occupation of the parcel of land applied for registration under a bonafide claim of ownership for more than fifty (50) years. Such being the case, it is conclusively presumed that the applicants/movants have satisfied all the conditions essential to the confirmation of their title over the parcel of land sought to be registered and are entitled to the issuance of the corresponding Certificate of Title in their favor pursuant to the provisions of Presidential Decree No. 1529, otherwise known as the Property Registration Decree.

"The claim of Dolores Llacuna is hereby considered abandoned for failure to prosecute for an unreasonable length of time.

"WHEREFORE, title to the parcel of land described as Lot No. 7220 indicated in the Cadastral Plan of Laoag City, Province of Ilocos Norte, containing an area of 2,980 square meters, more or less, and situated in Brgy. 50, Buttong, Laoag City, Ilocos Norte, is hereby ordered and

confirmed in favor of Lowelyn T. Santos, married to Sheila Gutierrez; Milner T. Santos, single; Milandro T. Santos, single; Myrna T. Santos, single; and, Madelyn T. Santos, single, all of legal ages, Filipino citizens and residents of Brgy. #50 Buttong, Laoag City, Philippines, who shall own the property in equal shares.

"Thirty (30) days after the decision shall have become final, let an Order for the issuance of a decree of title be issued in their favor.

"SO ORDERED."<sup>[16]</sup>

On July 20, 2003, the State represented by the Assistant City Prosecutor filed a Motion For Reconsideration manifesting that though the State is not claiming an interest over the subject parcel of land, it would be best if the Community Environment and Natural Resources Office (CENRO) of the DENR-Laoag City be ordered to investigate and determine if the land is part of the public domain and require the investigator to testify on his report. <sup>[17]</sup> On August 13, 2003, the State represented by the Office of the Solicitor General filed a Notice of Appeal.<sup>[18]</sup> In its Order dated September 25, 2003, the trial court approved the notice of appeal and denied the motion for reconsideration filed by the Office of the City Prosecutor.<sup>[19]</sup>

In this appeal, the State seeks to reverse and set aside the decision of the trial court on the ground that --

"THE COURT *A QUO* ERRED IN GRANTING THE APPLICATION BECAUSE APPELLEES FAILED TO NOTIFY THEIR ADJOINING OWNERS, WHICH IS FATAL TO THEIR APPLICATION."<sup>[20]</sup>

The appeal is meritorious.

Cadastral proceedings under the Cadastral Act (Act No. 2259, as amended) are judicial and *in rem*. In a cadastral proceeding, the Government is actually the plaintiff and all the claimants are defendants. This is because the former, represented by the Solicitor General, institutes the proceedings by a petition against the holders, claimants, possessors or occupants of such lands or any part thereof while the latter, or those claiming interest in the entire land or any part of it, whether named in the notice or not, are required to appear before the court and file an answer on or before the return day or within such further time as may be allowed by the court. All conflicting interests shall be adjudicated therein and the decree awarded in favor of the party entitled to the land.<sup>[21]</sup> One of the main purposes of cadastral proceedings is to settle titles to lands. Anyone claiming ownership of any land so affected should lay claim thereto. Failure to do so authorizes the Court to declare the same as public land.<sup>[22]</sup>

A cadastral decree and a certificate of title are issued only after the applicants prove that they are entitled to the claimed lots, all parties are heard and evidence is considered.<sup>[23]</sup> Under the Cadastral Act, the original certificates of title issued to the original registrant, shall have the same effect as certificates of title granted on application for registration of land under the Land Registration Act.<sup>[24]</sup> The decree of registration being a judgment *in rem*, it is generally binding upon the whole world, inclusive of persons not parties thereto, and particularly upon those who had

actually taken part in the proceeding as well their successors-in-interest by title subsequent to the commencement of the action.<sup>[25]</sup> More fundamental is the doctrine that in land registration cases, the burden of proof is on the applicant who must show that he is the real and absolute owner in fee simple of the land applied for. On him also rests the burden to overcome the presumption that the land sought to be registered forms part of the public domain considering that the inclusion in a title of a part of the public domain nullifies the title.<sup>[26]</sup>

The main function of the cadastral court is to determine whether the applicant, claimant or oppositor has a registrable title.<sup>[27]</sup> Under the law, cadastral courts may, among others, adjudicate title to any claimant entitled thereto, or declare a land public land.<sup>[28]</sup>

In land registration cases, the applicant must strictly comply with the jurisdictional requirements.<sup>[29]</sup> A land registration case being a proceeding *in rem*, jurisdiction *in rem* cannot be acquired unless there be constructive seizure of the land through publication and service of notice.<sup>[30]</sup> Publication is one of the essential bases of the jurisdiction of the court in land registration and cadastral cases, and additional territory cannot be included by amendment of the plan without new publication.<sup>[31]</sup>

The then governing law on the requisite publication of the notice of initial hearing, is found in Section 7 of the Cadastral Act<sup>[32]</sup> which provides:

"SEC. 7. Upon the receipt of the order of the court setting the time for initial hearing of the petition, the Chief of the General Registration Office [now Administrator of the Land Registration Authority] shall cause notice thereof to be published twice, in successive issues of the Official Gazette, in the English language. The notice shall be issued by order of the court, attested by the x x x (Administrator of LRA)"

In the case at bar, there is no showing that the notice of initial hearing was published in accordance with the provisions of the Cadastral Act. While it is true that Claimants-Movants, herein appellees, had filed an Answer in substitution of the original claimant, their alleged grandaunt Modesta Santos who filed her Answer wayback in 1933, such proof of publication in the Official Gazette was not retrieved from the original records and formally offered in evidence in the proceedings before the court *a quo*. Such failure to present proof of compliance with the publication of the Notice of Initial Hearing renders the entire proceedings void, including the judgment rendered by the trial court confirming appellees' title over Lot 7220 of Laoag Cadastre.

Very recently, the Supreme Court reiterated that in the absence of compliance with the requisite publication of the notice of initial hearing, the cadastral court did not acquire jurisdiction over the case. Thus ---

"In *Director of Lands, et al. vs. Benitez, et al.*, the Court categorically stated that **publication is essential to establish jurisdiction in land registration and cadastral cases, without which the court cannot acquire jurisdiction thereon or obtain any authority to proceed therewith.**