

NINTH DIVISION

[CA G.R. CV. NO. 76822, August 18, 2006]

**VALERIANO A. ABEJERO, ET.AL. PLAINTIFFS-APPELLEES, VS.
HEIRS OF JULIAN MELITON, REP. BY MARIA FE MELITON,
ESPINOSA, ET.AL., DEFENDANTS, REGISTER OF DEEDS OF NAGA
CITY, DEFENDANT-APPELLANT.**

D E C I S I O N

CARANDANG, J.:

The instant appeal was interposed by the Register of Deeds of Naga City, through the Office of the Solicitor General, to impugn the Order dated May 24, 2001 of the Regional Trial Court, Branch 23, of Naga City in Civil Case No. 96-3526, the full text of which is reproduced hereunder verbatim, thus:

Finding the allegations in the ex-parte manifestation and motion filed by the plaintiffs through counsel dated April 30, 2001 to be well-taken, the same is hereby granted.

Plaintiffs are hereby allowed to adopt all the evidence previously submitted and offered as against the defendants Heirs of Julian Meliton, represented by Maria Fe Meliton-Espinosa, both oral and documentary, including the documentary exhibits, as well as all the purposes of their offer in evidence as against the nominal defendant Register of Deeds of Naga City.

The same adopted oral and documentary exhibits, including the purposes for which they were offered which were previously admitted by the court are hereby made applicable to nominal defendant Register of Deeds of Naga City.

Furthermore, the decision rendered by the court dated July 17, 1998 is also made applicable to said nominal defendant Register of Deeds of Naga City, the pertinent provision of which is quoted hereinbelow:

"Wherefore, judgment is hereby rendered GRANTING the petition. Consequently, upon the finality of the Decision, Ma. Fe Meliton-Espinosa, the administratrix of the private respondents or any of the private respondents or person withholding the owner's duplicate copy of Transfer Certificate of Title No. 8027, Naga Registry, is hereby ordered to surrender the owner's duplicate copy of TCT No. 8027 to the Register of Deeds of Naga City and upon such surrender, the Registrar of said Registry is hereby directed to enter upon TCT No. 8027 the respective deeds of sale in favor of the petitioners and issue corresponding certificates of title in their names, after compliance with all the requirements of law for such registration.

Should Ma. Fe Meliton-Espinosa or any of the private respondents or

person in custody of TCT No. 8027 fail or refuse to surrender the same to the Register of Deeds, within fifteen (15) days after the finality of this Decision, said TCT No. 8027 is hereby declared null and void and the Register of Deeds of Naga City is hereby ordered to issue a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of TCT No. 8027. After the issuance of a new certificate of title, the Registrar is hereby directed to enter upon the new certificate of title the respective deeds of sale in favor of the petitioners and issue corresponding certificates of title in their names, after compliance with all the requirements of law for such registration."

SO ORDERED. (Rollo pp. 59-60)

The facts:

Julian Meliton is the absolute and registered owner of Lot No. 1095-C, a tract of land with an area comprising of 227,270 square meters, located at Barrio Concepcion Pequeño, Naga City, and which is more specifically described under and covered by TCT No. 8027 (Exhibit "F", Folder of Exhibits). On separate dates covering the period from March 1974 to October 1983, each of the herein 67 individual plaintiffs-appellees (Abejero, et al., for brevity) purchased different and varying sizes of smaller lots that form part and parcel of Lot No. 1095-C. After Julian Meliton shall have executed the pertinent contracts of absolute sale, Abejero, et al., took actual possession of their respective lots, built their houses therein, declared the lots in their names for taxation purposes, and paid the corresponding realty taxes due thereon. Evidently, Julian Meliton, in spite of demand, failed or refused to lend and surrender TCT No. 8027 to Abejero et al., in order for the latter to register their respective Deeds of Absolute Sale corresponding to the parcels of land that they purchased. Abejero et al., then discovered that the original owner's duplicate copy of TCT No. 8027 is in the possession and custody Maria Fe Meliton-Espinosa, who, after Julian Meliton's death was duly appointed as the administratrix of the latter's estate.

On March 20, 1996, Abejero, et al., instituted a Petition before the RTC of Naga City against the Register of Deeds of the province and Maria Fe Meliton-Espinosa, in her capacity as the administratrix of the estate and representative of the Heirs of the late Julian Meliton. Lodged pursuant to the provisions of Section 107 of Presidential Decree No. 1529, the Petition sought to compel the surrender of the owner's duplicate copy of TCT No. 8027, or to cause the annulment of said certificate of land transfer and the issuance of a new title in its stead (Record, pp. 1-6).

The records show that the RTC was unable to serve the pertinent summons to Meliton-Espinosa considering that the process servers of the court failed to find her at her given addresses. Consequently, upon order of the RTC, summons was served upon Meliton-Espinosa by means of publication in the Philippine Times Journal (Record pp. 16 and 19). In spite of being impleaded as party-respondent, however, no summons was served upon the Register of Deeds of Naga City. Failing to file a responsive pleading within the 70-day period allowed by the Court, the RTC, upon motion of Abejero et al., declared the Heirs of Julian Meliton in default, and accordingly, Abejero, et al., were allowed to present their evidence ex-parte (Record p. 20). After a review of the documents adduced in evidence, the duly appointed Commissioner of the RTC prepared and submitted a Report on September 1, 1997

recommending that Abejero et al., be declared entitled to the relief sought for (Record pp. 21-47).

Guided by the findings and recommendation stated in the September 1, 1997 Commissioner's Report, the RTC on July 17, 1998 promulgated a Decision in favor of Abejero et al., disposing as follows:

"Wherefore, judgment is hereby rendered GRANTING the petition. Consequently, upon the finality of the Decision, Ma. Fe Meliton-Espinosa, the administratrix of the private respondents or any of the private respondents or person withholding the owner's duplicate copy of Transfer Certificate of Title No. 8027, Naga Registry, is hereby ordered to surrender the owner's duplicate copy of TCT No. 8027 to the Register of Deeds of Naga City and upon such surrender, the Registrar of said Registry is hereby directed to enter upon TCT No. 8027 the respective deeds of sale in favor of the petitioners and issue corresponding certificates of title in their names, after compliance with all the requirements of law for such registration. Should Ma. Fe Meliton-Espinosa or any of the private respondents or person in custody of TCT No. 8027 fail or refuse to surrender the same to the Register of Deeds, within fifteen (15) days after the finality of this Decision, said TCT No. 8027 is hereby declared null and void and the Register of Deeds of Naga City is hereby ordered to issue a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of TCT No. 8027. After the issuance of a new certificate of title, the Registrar is hereby directed to enter upon the new certificate of title the respective deeds of sale in favor of the petitioners and issue corresponding certificates of title in their names, after compliance with all the requirements of law for such registration. Considering that the summons was served by publication and the defendants failed to appear in the action, let a copy of this Decision be published once in a newspaper of national circulation, at the expense of the prevailing party, pursuant to Section 9, Rule 13 of the 1997 Rules of Civil Procedure.

SO ORDERED."

Accordingly, the Decision was published at the Philippines Times Journal on August 19, 1998 (Record p. 95). After the July 17, 1998 Decision became final and executory, Abejero et al., immediately filed a motion for its execution. The Register of Deeds of Naga City, through then incumbent Registrar Greta Filio-Paraiso, filed a Manifestation to register an opposition against the motion for execution predicated upon the argument that since summons was never served on her office, the court did not acquire jurisdiction thereby rendering its judgment in the action null and void (Record p. 104). The Register of Deeds thereafter lodged a Motion to declare the proceedings had in the case null and void on jurisdictional grounds (Record pp. 110-112). The Register of Deeds then referred the matter to the OSG, which filed a Comment to the move of Abejero et al., for the implementation of the July 17, 1998 Decision (Record pp. 143-148).

Impelled by the continuous oppositions raised by the Register of Deeds citing want of jurisdiction, Abejero et al., on February 1, 1999 filed a Motion to re-open the case in order to effect the service of summons to the Register of Deeds of Naga City