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SECOND DIVISION

[G.R. No. 162846. September 22, 2005]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **JOSE LUBIS MASONGSONG and JUANITO LUBIS MASONGSONG,** *respondents.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE; RESPONDENTS MISERABLY FAILED TO PROVE, DESPITE THE PREPONDERANT EVIDENCE THEY ADDUCED, EVEN BY SECONDARY EVIDENCE, THE EXISTENCE OF DECREE NO. 639024 ALLEGEDLY ISSUED IN FAVOR OF THEIR PREDECESSOR-IN-INTEREST.— The respondents, as the petitioners in the RTC, were burdened to prove the following: that the court had rendered the decision in LRC Case No. 24, LRC Cad. Record No. 1296 covering Lot 8500 in favor of Serapio Lubis, and that as such, Decree No. 639024 was issued on June 21, 1937 in favor of Serapio Lubis. The respondents were burdened to adduce in evidence the original, or even a certified copy directing the issuance of a decree to prove its contents. As provided for in Section 3, Rule 130 of the Rules of Court, secondary evidence may be adduced in such a case. The offeror is not obliged to prove the loss or destruction of the original document beyond all possibility, as it is enough to prove a reasonable probability of such loss. This may be done by a *bona fide* and diligent search, fruitlessly made in places where it is likely to be found. *Destruction* signifies that the original no longer exists, while a *loss* signifies merely that it cannot be discovered. The term execution, on the other hand, means the accomplishment of a thing; the completion of an act or instrument; the fulfillment of an undertaking. The respondents adduced preponderant evidence to prove the existence of Decree No. 639024 covering Lot No. 8500 issued on June 21, 1937, and Lot No. 8434, Cad. 218 Lipa Cadastre with an area of 6,146.85 square meters located in Barangay Calingatan, Mataasnakahoy, Batangas, originally surveyed from February 1925 to September 1930. A copy of the decree was filed with the Land Registration Commission (now the LRA), as evidenced by Record

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Book of Decrees, but the same was not found in the LRA Vault Section, Docket Division. The respondents failed to adduce evidence that the decision of the court and the decree were in favor of Serapio Lubis, and failed to present a certified copy of the LRA decision in LRC Case No. 24. The respondents even failed to adduce in evidence the original or certified true copy of the court's decision in favor of Serapio Lubis. They could have secured a copy of the decision from the court or from the LRA, but failed to do so. There is even no showing that the court records in LRC Case No. 24 and the copy of the decision transmitted to the Land Registration Commission (now the LRA) were missing, lost or destroyed. The Court notes that the respondents failed to adduce proof that from 1937 until 1968, Serapio Lubis, or after his death, his heirs, ever declared the property for taxation purposes under his/their names and paid the realty taxes therefor. There is even no evidence that Serapio, or his heirs after his death, ever took possession of the property from 1937. Inexplicably, it was only in 1968, long after Serapio's death, that the property was declared for taxation purposes under his name. Moreover, Jose Masongsong took possession and cultivated the property only in 1970.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Teodorico N. Diesmos for respondents.

D E C I S I O N

CALLEJO, SR., *J.*:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 75826 which affirmed the Decision[2] of the Regional Trial Court (RTC) of Lipa City, Branch 12, granting the petition in LRC Case No. 2001-0677.

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[1] Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Eugenio S. Labitoria and Rosmari D. Carandang, concurring; *Rollo*, pp. 46-54.

[2] Penned by Judge Vicente F. Landicho; *Id.* at 55-58.

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The Antecedents

On December 28, 2001, Jose Lubis Masongsong and his brother, Juanito Lubis Masongsong, filed a petition in the RTC of Lipa City, for the declaration of nullity of Decree No. 639024 purportedly issued in favor of Serapio[3] Lubis on June 21, 1937 in LRC Cadastral Record No. 1296, and that the Administrator of the Land Registration Authority (LRA) be ordered to issue a new decree in favor of the petitioners.

The petitioners alleged that Serapio Lubis was the owner of a parcel of land located in Barangay Calingatan, Mataasnakahoy, Batangas. A cadastral survey was later conducted in Lipa and Mataasnakahoy, Batangas, Cad. 218 Lipa Cadastre, where the property of Serapio Lubis, with an area of 6,146.85 square meters, was identified as Lot No. 8500. The lot was the subject of Cadastral Case No. 24, LRC Cad. Record No. 1296, and after due proceedings, a decision directing the issuance of a decree over the lot was rendered in favor of Serapio Lubis. Conformably, Decree No. 639024 was issued on June 21, 1937. Serapio Lubis died intestate on December 12, 1940, and was survived by his two daughters, Angela Lubis Masongsong and Gregoria Lubis-Dimaculangan. The latter died on April 26, 1977, survived by her heirs Corazon Dimaculangan *Vda. de* Bariuan and Milagros Dimaculangan-Lescano; Angela Lubis Masongsong, likewise, died intestate on October 29, 1989, survived by her children, namely, Alberto, Nicanor, Jose and Juanito, all surnamed Masongsong, and Arsenia Masongsong-Reyes and Lourdes Masongsong-Aranda. Thereafter, the heirs of Angela Masongsong and Gregoria Dimaculangan agreed to adjudicate the aforesaid lot unto themselves, and caused the property to be re-surveyed. The plan[4] was prepared by Geodetic Engineer Gregorio T. Pesigan on August 15, 1998. The petitioners then discovered that the Bureau of Lands had no existing or salvaged records of Decree No. 639024. Thus, on December 31, 1999, the heirs of Angela Masongsong and Gregoria Dimaculangan executed a

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[3] Also spelled "Serafio."

[4] Records, p. 10.

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deed entitled "*Pagbabahaging Labas sa Hukuman na May Bilihang Ganap O Lubusan*"[5] over the property. The property had been declared for taxation purposes, the latest of which was in 1993, under Tax Declaration No. 008-00006 in the name of Serapio Lubis.[6]

The petitioners also indicated the names and addresses of the adjoining lot owners as "Placida and Baldomero Lubis, Marlene Nuestro and Salud Liac, c/o Gregorio Landicho, at Barangay Calingatan, Mataasnakahoy, Batangas." They averred that, to the best of their knowledge, the property had not been mortgaged nor encumbered, and that no other person had any interest thereon. They asserted that despite earnest efforts, Decree No. 639024 could no longer be located, and is as such presumed to have been lost or destroyed during World War II.[7]

The following were appended to the petition: the Deed of Extrajudicial Settlement of the Estate of Serapio Lubis, Angela Masongsong and Gregoria Dimaculangan executed by the petitioners and the heirs of Angela Masongsong and Gregoria Lubis-Dimaculangan on December 31, 1999; and a Certification dated July 13, 2000 issued by the LRA stating that Decree No. 639024 issued on June 21, 1937 covering Lot No. 8500 of the Cadastral Survey of Lipa and Mataasnakahoy, Batangas under Cad. Case No. 24, LRC Cadastral Record No. 1296 is not among its salvaged records.

On January 4, 2002, the trial court issued an Order[8] giving due course to the petition and setting the hearing at 8:30 a.m. of February 4, 2002, where all persons interested could appear and show cause why the petition should not be granted. The court also directed that copies of the petition and its annexes and the aforesaid order be served on the Register of Deeds of

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[5] *Id.* at 12-14.

[6] *Id.* at 16.

[7] *Id.* at 4-5.

[8] Records, p. 19.

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Batangas, and the City Prosecutor of Lipa City, and that it be posted in at least three (3) conspicuous places, namely, at the Lipa City public market, Lipa City Hall and at Barangay Calingatan, Mataasnakahoy, Batangas.

The Office of the Solicitor General (OSG) did not file any written opposition to the petition.

During the hearing of the petition, petitioner Juanito Lubis Masongsong testified and declared that petitioner Jose Masongsong had taken possession and cultivated the property since 1970.[9] He also stated that the heirs of Serapio Lubis, Angela Masongsong and Gregoria Dimaculangan had settled and adjudicated the estate of the deceased unto themselves on December 31, 1999.[10]

The petitioners adduced in evidence a technical description of the property duly certified and found correct by the Regional Technical Director of the Bureau of Lands on August 13, 1998;[11] tax declarations covering the property in the name of Serapio Lubis, from 1968 to 1994;[12] a Certification from the LRA dated May 29, 1998, stating that after due verification of the record book of cadastral lots in its custody, it was found that Decree No. 639024 was issued on June 21, 1937 covering Lot No. 8500 of the Cadastral Survey of Lipa and Mataasnakahoy, Batangas, based on a decision in Cad. Case No. 24, LRC Cad. Record No. 1296;[13] a Certification by the Register of Deeds of Batangas stating that there was no existing or salvaged record of the certificate of title covering Lot No. 8500 of the Lipa City Cadastre covered by Decree No. 639024, Cad. Case No. 24, LRC Cad. Record No. 1296 in the name of Serapio Lubis;[14] and a certification from the Department of Environment and Natural Resources (DENR) Region IV, that per its records, Lot No. 8500 located in Barangay Calingatan,

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[9] TSN, 7 March 2002, p. 21.

[10] *Id.* at 10.

[11] Exhibit "R".

[12] Exhibits "S" to "S-6".

[13] Exhibit "V".

[14] Exhibit "X".

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Mataasnakahoy, Batangas, is not covered by any kind of public land application or patent;[15] and a certified true copy of page 88, Cadastral Decree Book, Cadastral Decree Section, LRC, showing that Decree No. 639024 covering Lot No. 8500 based on the decision, Cadastral Case No. 79-1 was issued on June 21, 1937.[16]

The OSG did not adduce any evidence against the petition.

On May 29, 2002, the trial court rendered a Decision[17] granting the petition. The *fallo* of the decision reads:

> WHEREFORE, the petition is GRANTED. The lost text of Decree No. 639024 issued on June 21, 1937 in the name of Serapio Lubis is cancelled and the Administrator of the Land Registration Authority, upon payment of the prescribed fees due thereon, is hereby ordered to issue a new decree in lieu thereof which shall bear a memorandum that it was issued in lieu of the lost or destroyed decree, but shall in all respect be entitled to like faith and credit as the original decree. Also, the Register of Deeds for the Province of Batangas, Batangas City is hereby ordered to cause the registration of the same in the name of Serapio Lubis.
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> SO ORDERED.[18]

The OSG appealed the decision to the CA, alleging that the trial court erred in granting the petition for the issuance of a new decree, since the petitioners failed to adduce in evidence a copy of the decree purportedly issued in the name of Serapio Lubis, or at least a certified copy of the decision of the court granting the decree. It further alleged that there was no showing in the RTC that the owners of the adjoining lots, namely, Placida Lubis, Baldomero Lubis, Marlene Nuesto and Salud Liac, all of Barangay Calingatan, Mataasnakahoy, Batangas, were served with copies of the petition, the order of the court setting the case for hearing and the notice of hearing issued by the court.

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[15] Exhibit "Y".

[16] Exhibit "Z-1".

[17] Records, pp. 120-123.

[18] *Id.* at 123.

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On March 15, 2004, the CA rendered judgment affirming the decision of the RTC and dismissing the appeal of the OSG.[19]

In due course, the Republic of the Philippines, through the OSG, filed a petition for review of the decision, alleging that:

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE FAILURE TO PRODUCE IN EVIDENCE THE ASSAILED DECREE OR AT LEAST THE DECISION RELEVANT THERETO, WAS ADEQUATELY EXPLAINED BY RESPONDENTS, AS WELL AS IN GIVING WEIGHT TO THE CERTIFICATIONS OF THE GOVERNMENT AGENCIES CONCERNED, NAMELY, THE LRA AND THE REGISTER OF DEEDS, TO THE EFFECT THAT THE SUBJECT DECREE WAS PRESUMABLY LOST OR DESTROYED.

II

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE ADJOINING LOT OWNERS AND RESPONDENTS' CO-OWNERS NEED NOT BE NOTIFIED OF THE PROCEEDINGS IN THE COURT *A QUO*.[20]

On the first ground, the OSG avers that the respondents failed to prove that Decree No. 639024 in favor of Serapio Lubis ever existed; it behooved the respondents, as petitioners in the RTC, to adduce as evidence the decree of the court in Cadastral Case No. 24, LRC Cad. Record No. 1296, or in the absence thereof, any credible explanation why they failed to present such decree; and there is no competent and credible evidence that such decree had been lost or destroyed during the Second World War. Moreover, while the Republic of the Philippines, through the OSG, failed to adduce evidence in opposition to the petition, the respondents, as petitioners in the RTC, were burdened to prove the allegations of their petition and should have relied on the strength of their evidence.

The assailed ruling of the CA reads:

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[19] *Rollo*, pp. 46-54.

[20] *Id.* at 26.

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In [view] of the facts and circumstances in this case reveals that appellee could not have possibly produced Decree No. 639024 issued by the government in favor of Serapio pursuant to a decision rendered by the court relative thereto, for the simple reason that the same was lost or destroyed due to the devastation of the second World War. Contrary to appellant's claim, the failure to produce the assailed decree or decision relevant thereto was well-explained by the appellee. As a matter of fact, they presented the certifications of the proper government agency to assert that the decree was lost or destroyed. As certified by Alberto Lingayo, Acting Chief of the Ordinary and Cadastral Decree Division of the LRA, a decree was issued for the subject lot pursuant to a court decision thereon. Although Salvador Oriel, the Chief of the Docket Division of the said office attested that there is no salvaged decree on file involving the disputed lot, he stated that the decree was presumed to have been lost or destroyed as a consequence of the World War. Also, the non-existence of a copy of the decree in the files of the LRA or the Register of Deeds does not imply that a decree had never been issued or recorded. Thus, the trial court did not err in giving weight to these certifications and in granting the petition on the basis thereof. In the issuance of these certifications, it is presumed, in the absence of contradictory evidence, that an official duty has been regularly performed. Since the decree in the name of appellee's predecessor was issued on June 21, 1937, the court decision granting the same could have, likewise, been issued around the same time. As such, it can also be presumed that the decision was lost or destroyed due to the war. Besides, it is too late in the day to ask for such decision, when the appellant – oppositor in the instant petition, could have asked the same during the trial at the court below. With the loss or destruction of these documents, this Court is, likewise, bent on relying on the certifications issued by the LRA.[21]

The contention of the petitioner is correct.

The respondents, as the petitioners in the RTC, were burdened to prove the following: that the court had rendered the decision in LRC Case No. 24, LRC Cad. Record No. 1296 covering Lot 8500 in favor of Serapio Lubis, and that as such, Decree No. 639024 was issued on June 21, 1937 in favor of Serapio Lubis. The respondents were burdened to adduce in evidence the original,

[21] *Rollo*, pp. 51-52.

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or even a certified copy directing the issuance of a decree to prove its contents. As provided for in Section 3, Rule 130 of the Rules of Court, secondary evidence may be adduced in such a case, *viz.*:

> Section 3. *Original document must be produced; exceptions.* — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
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> (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
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> (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
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> (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
>
> (d) When the original is a public record in the custody of a public officer or recorded in a public office.

Furthermore, Section 5, Rule 130 of the Rules of Court states that:

> Section 5. *When the original document is unavailable.* – When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

The offeror is not obliged to prove the loss or destruction of the original document beyond all possibility, as it is enough to prove a reasonable probability of such loss.[22] This may be

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[22] *Paylago v. Jarabe,* G.R. No. L-20046, 27 March 1968, 22 SCRA 1247.

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done by a *bona fide* and diligent search, fruitlessly made in places where it is likely to be found.[23] *Destruction* signifies that the original no longer exists, while a *loss* signifies merely that it cannot be discovered.[24] The term execution, on the other hand, means the accomplishment of a thing; the completion of an act or instrument; the fulfillment of an undertaking.[25]

The respondents adduced preponderant evidence to prove the existence of Decree No. 639024 covering Lot No. 8500 issued on June 21, 1937, and Lot No. 8434, Cad. 218 Lipa Cadastre with an area of 6,146.85 square meters located in Barangay Calingatan, Mataasnakahoy, Batangas, originally surveyed from February 1925 to September 1930.[26] A copy of the decree was filed with the Land Registration Commission (now the LRA), as evidenced by Record Book of Decrees,[27] but the same was not found in the LRA Vault Section, Docket Division. The respondents failed to adduce evidence that the decision of the court and the decree were in favor of Serapio Lubis, and failed to present a certified copy of the LRA decision in LRC Case No. 24.

The respondents even failed to adduce in evidence the original or certified true copy of the court's decision in favor of Serapio Lubis. They could have secured a copy of the decision from the court or from the LRA, but failed to do so. There is even no showing that the court records in LRC Case No. 24 and the copy of the decision transmitted to the Land Registration Commission (now the LRA) were missing, lost or destroyed.

The Court notes that the respondents failed to adduce proof that from 1937 until 1968, Serapio Lubis, or after his death, his heirs, ever declared the property for taxation purposes under his/

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[23] *Government of the Philippine Islands v. Martinez,* 44 Phil. 817 (1918).

[24] *Francisco, The Revised Rules of Court in the Philippines,* Vol. VII, Part I, 1997 ed., p. 157.

[25] *Id.* at 155.

[26] Exhibit "P".

[27] Exhibit "W".

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their names and paid the realty taxes therefor. There is even no evidence that Serapio, or his heirs after his death, ever took possession of the property from 1937. Inexplicably, it was only in 1968, long after Serapio's death, that the property was declared for taxation purposes under his name. Moreover, Jose Masongsong took possession and cultivated the property only in 1970.

The Court agrees with the petitioner that Section 109 of Presidential Decree No. 1529 has no application in this case, as such provision applies only when the owner's duplicate certificate of title is lost or stolen:

> SEC. 109. *Notice and replacement of lost duplicate certificate.* – In case of loss 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 fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.
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> 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.

Clearly, this provision does not apply to the loss or destruction of a decree based on a decision of the land registration court.

IN LIGHT OF ALL THE FOREGOING, the petition is *GRANTED*. The assailed decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. The petition of the respondents in the court *a quo* is *DISMISSED*.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Tinga, and *Chico-Nazario, JJ.,* concur.