

HEIRS OF REGINO YAÑEZ, REPRESENTED BY PEDRITO ADIS, PLAINTIFFS-APPELLEES, VS. HEIRS OF ATTY. GALDINO B. JARDIN, DEFENDANTS-APPELLANTS,

Ponente: INTING, J.

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INTING, J.:

This is an appeal from the February 25, 1992 Decision[1] of the Regional Trial Court, Branch 17, Cagayan de Oro City in Civil Case No. 7395 for quieting of title, decreeing as follows:

"WHEREFORE, premises considered, the Court hereby orders the defendant/third party plaintiff Galdino Jardin to return and deliver back the possession and enjoyment of the small parcel of land in litigation (Lot No. F-10-01-01603-D, consisting of 10,643 square meters, more or less), or any portion thereof, to the plaintiff within thirty (30) days, with the suggestion to the defendant to institute the corresponding proceedings for annulment of OCT No. P-1279, considering the fact that the same was issued much later than the mother title covering the bigger parcel, which is TCT No. 28322, the former having been issued only on December 13, 1974, through Free Patent (x-1)-3183 application, while the original title of the land (OCT No. RO-365, later cancelled by TCT No. T-25435) was issued as early as March 3, 1941, through ordinary land registration proceeding.

No pronouncement as to costs.

SO ORDERED. "

The facts of the case are as follows:

Regino Yañez (Regino) claims to own a 10,643 sq.m. lot known as Lot F-10-01-01603-D located in Pagatpat, Cagayan de Oro City, covered by OCT P-1279[2] issued in his name pursuant to Free Patent (x-1) 3183 issued on December 13, 1974. The lot was surveyed on June 6, 1974 bounded on the South along lines 1 to 8 by Lot 3968; line 8-9 by a public land; on the West along line 9-10 by Lot 3966; line 10-11 by the old river bed; on the North along lines 11-16 by Lot 3967; on the North East along lines 16-19 by Lot 3970; South West along line 19-20 by the Iponan River and along line 20-1 by Lot 3971.

However, his alleged occupation and possession was disturbed by Galdino Jardin (Galdino) who asserted ownership of the land and maintains that he bought a parcel of land from Pedrito Adis and it included the 10,643 sq.m. Regino explained that the sale made by Pedrito did not include his parcel of land. He also presented OCT P-1279 to Galdino showing his title to the property but the latter discounted the document and insisted on his claimed right. Galdino was able to take possession of the property depriving Regino and his family of its use. Consequently, on October 15, 1980, Regino filed an action for quieting of title against Galdino claiming that the latter's acts cast a cloud on his title.[3]

On the other hand, Galdino defends that before he bought the parcel of land including the subject area, Pedrito Adis was already in possession of the property. Galdino took over its possession only after the sale in his favor was consummated. The deed of sale was executed on February 26, 1979 in the presence of Pedrito; and even

Regino did not interpose any complaints or objections at that time and instead affirmed Pedrito's acts. Per deed of sale, Lot 3968 which was sold to Galdino has an area of 53,867sq.m. It was previously owned by Regino but was thereafter sold in 1977[4] to Pedrito, who in turn sold it to Galdino. It was covered by TCT T-25435 issued on March 3, 1941 and surveyed on November 1926 to January 1933. After the sale to Galdino, TCT 28322 was issued in his name on February 27, 1979.[5]

Galdino adds that Regino knew that he would not have bought the land if the disputed property was excluded. Regino supposedly benefitted from the sale because he received part of the payment. Further, Galdino assails Regino's title as fake, spurious, and falsified.[6]

On June 1, 1981, Galdino filed a third party complaint against Pedrito[7] averring that on February 26, 1979, the latter sold to him an agricultural land which he was led to believe included the herein disputed property. They agreed that after the execution of the deed of sale Pedrito's tenants will vacate the area upon payment of compensation. Pedrito allegedly sold the land because he could no longer pay the outstanding balance of the purchase price to its previous owner Regino.[8] Before the sale to Galdino, however, the parties agreed to meet and conduct an ocular inspection of the property wherein Pedrito could point the boundaries of the land he was selling. During the first scheduled inspection, Pedrito was indisposed; he allegedly sent his sales agents on his behalf. During that time, an area was covered with rain water. Galdino asked Pedrito's sales agents if the flooded area was part of the land to be sold and the latter answered in the affirmative.[9]

Galdino wanted to ensure the area covered by the sale so that he asked for Pedrito to personally do the ocular inspection and clarify the boundaries. It was scheduled on the first Sunday of February in 1979 during which time Pedrito pointed to Galdino the area included in the sale which was the whole plain portion said to be more than six (6) hectares bounded on the North East by a man-made canal in the land of Marcial Rivera; on the South West by the land of the Talampases; and on the East by the land of Bienvenido Mugallon.[10] Galdino decided to buy the land purportedly on the condition that Regino be present during the payment to ensure that the latter will be paid the remaining purchase price which Pedrito failed to pay. Upon encashment of the checks, Pedrito allegedly gave Regino the unpaid price to which the latter acknowledged receipt by affixing his signature.[11] Thereafter, Galdino took possession of the land and fenced its boundaries including the area claimed by Regino.

However, sometime in 1980, Pedrito went to his house and offered to sell the disputed portion of the lot bringing along an OCT in the name of Regino. This surprised Galdino believing all along that it was already included in the previous sale by Pedrito, who knew beforehand that he would not buy the land if the disputed property was not included.

Pedrito filed his answer to Galdino's claims admitting that he did sell a land to the latter which did not include the land subject of the case because it is covered by a different title in Regino's name. He denied receiving any consideration for that area or pretending to own and sell it. He contends that after the sale, Galdino just assumed ownership and possession of the disputed land.[12]

During trial, Pedrito reiterated that the area he sold to Galdino did not include the controverted area as it was not his but Regino's. Regino did not sell that portion to him hence, he cannot likewise sell that to Galdino. The area he sold to Galdino of 53,867 sq.m. was then in his possession before the sale and the adjoining land in dispute was in Regino's possession.[13] On cross-examination, Pedrito admitted having a tenant and he confirmed that it was Regino's signature that was affixed on the deed of sale. He also affirmed that he sold the land so that he could pay Regino the remaining balance; but he denied having any sales agents. He offered to sell the disputed land to Galdino after Regino asked him to do so but he did not question Galdino's occupation of the subject property because he was not the owner thereof.[14] On his re-direct, Pedrito claimed that the contents of the June 16, 1979

acknowledgment receipt[15] stating that he has received P5,000.00 as the final and full payment of the purchase price of the land which included the vacant lot F-10-01-016834-D was solely dictated by Galdino. Pedrito acknowledged receiving the amount but it was for the five (5) hectare land and not for the disputed area.[16] It was also noted that the word "including" in the last phrase of the receipt which says: "including the vacant lot, in possession of Atty. Jardin, F-10-01-016834-D." was not in line with the preceding phrase denoting that it may have just been inserted.[17] Although he was only a high school graduate, Pedrito admitted that he understood the contents of the receipt but he was not sure if he read the lot number indicated therein.[18]

Regino's niece, Prescilla Acuña, was presented in court. She alleged that she was put in charge of paying the disputed land's taxes and other fees. She could not ascertain when but she recalled trying to get hold of Galdino to ask him to buy their portion of the lot otherwise, he must vacate the area; but to no avail. She admitted that she and Regino received money which was part of Galdino's payment to Pedrito. However, it was for the payment of Pedrito's balance for the land previously sold to him and it did not include the property in controversy.[19]

Galdino, on the other hand, testified that he knew Regino in February 1979 when he went to the latter's house to inform him about the sale by Pedrito and to ask him to sign some documents considering that Pedrito still owes Regino a balance for the purchase price of the land. Galdino maintained that during the ocular inspection, Pedrito affirmed to him that the dried river bed is included in the sale but they just need to pay the tenants. After the sale was consummated, he took over the land and fenced the area. However, even after he paid the price, the tenants continued to stay until he paid an additional P5,000.00 received by Pedrito and his tenants. From then on he enjoyed peaceful possession of the land until 1980 when he received the complaint against him; and that it was only then that he came to know that the disputed land had a separate title in the name of Regino. Consequently, he filed a petition before the Bureau of Lands to have Regino's patent on the land cancelled but the petition has not yet been acted upon. Pedrito went to see him again offering to sell the disputed portion but he insisted that that area was already included in their sale.[20] On his cross-examination, Galdino reasoned that he did not see the point of relocating the area because Pedrito already pointed to him the boundaries of the land which were up to the man-made canals.[21]

The court a quo rendered the assailed decision finding that the subject land is covered by two (2) titles namely: 1.) the title on Lot 3968 covering an area of 53,867 sq.m. covered by TCT T-28322 in the name of Galdino Jardin; and 2.) OCT P-1279 with an area of 10,643 sq.m. issued pursuant to a Free Patent in the name of Regino Yañez. However, it did not dwell on the issue of which title should subsist as there is a proper proceeding for that. Nevertheless, the court a quo found that Regino is entitled to the possession of the property not only because he has a registered title to the property but also because he was in possession of the property prior to the sale. Further, the court a quo added that OCT P-1279 was issued later than the mother title upon which TCT 28322 was based since the former was issued only on December 13, 1974 while the mother title was issued as early as March 3, 1941.

Adamant, the heirs of Jardin appeal to Us assailing that the court a quo erred:

I.

IN HOLDING THAT PLAINTIFF-APPELLEE IS ENTITLED TO THE POSSESSION AND ENJOYMENT OF THE SMALL PARCEL OF LAND IN QUESTION, NOT ONLY BECAUSE HE HAS A REGISTERED TITLE TO THE SAME, BUT BECAUSE HE WAS THE ONE IN POSSESSION OF THE SMALL PARCEL OF LAND PRIOR TO THE SALE MADE BY THE THIRD PARTY DEFENDANT TO DEFENDANT-THIRD-PARTY-PLAINTIFF OF A BIGGER PARCEL OF LAND AND PRIOR TO THE TAKING POSSESSION OF THE SMALL PORTION BY THE LATTER AFTER SAID SALE;

II.

IN HOLDING THAT PLAINTIFF-APPELLEE BE REINSTATED TO SUCH POSSESSION WHICH WAS DISTURBED AND INTERRUPTED BY DEFENDANT-THIRD-PARTY-PLAINTIFF;

III.

IN ORDERING THE DEFENDANT-THIRD-PARTY-PLAINTIFF TO RETURN AND DELIVER BACK THE POSSESSION AND ENJOYMENT OF THE SMALL PORTION (PARCEL) OF LAND IN LITIGATION (LOT F-10-01-01603 D) CONSISTING OF 10,643 SQUARE METERS TO THE PLAINTIFF-APPELLEE; AND

IV.

THAT THE DECISION OF THE COURT A QUO IS CONTRARY TO LAW AND JURISPRUDENCE.

The heirs of Jardin maintain that the disputed lot is within the bigger parcel of land sold to Galdino by Pedrito which is now covered by TCT 28322 in Galdino's name hence, it could not have been in the possession of Regino otherwise, Galdino would not have bought the property; that all the time it was Pedrito who was in possession of the controversial area; that the issuance of a Free Patent in Regino's name in March 1974 is illegal, irregular and anomalous and to tolerate that would destroy the purpose of the torrens system which is the indefeasibility of titles; that it was impossible that a small portion of the lot will be segregated from the mother land and considering that Regino had Lot 3968 surveyed in 1930, it would be absurd for him not to include the subject land in the titling; and granting that the subject property is covered by two (2) titles namely: OCT P-1279 and TCT T-28322, which covered the bigger parcel to which the disputed property belongs, the latter must prevail because it was issued long before OCT P-1279, thus, their title cannot be defeated.

Our Ruling

The appeal is bereft of merit.

The court a quo ruled that the disputed property is within the land covered by the mother title upon which Galdino's TCT was based. But We find the records lacking in evidence to support such conclusion.

Primarily, the mother title was not presented. However, it was established that it was registered on March 3, 1941 covering 53,867 sq.m. On the other hand, Regino's Free Patent was issued later in 1974 covering 10,643 sq.m. If the land in controversy is part of the bigger parcel upon which a title had already been issued earlier, why was Regino granted a Free Patent on that area?

Section 44 of the Commonwealth Act No. 141 provides that any natural-born citizen who, since July 14, 1926 or prior thereto, has continuously occupied and cultivated, either by himself or through his predecessors in interest, a tract or tracts of agricultural public lands subject to disposition, or who shall have paid the real estate tax thereon while the same has not been occupied by any other person shall be entitled, under the provisions of this chapter, to have a free patent issued to him for such tract or tracts of land not to exceed twenty-four hectares. Pertinent portion of Section 8, Chapter II thereof states that only those lands shall be declared open to disposition or concession which have been officially delimited and classified and, when practicable, surveyed, and which have not been reserved for public or quasi-public uses, nor appropriated by the Government, nor in any manner become private property, nor those on which a private right authorized and recognized by this Act or any other valid law may be claimed, or which, having been reserved or appropriated, have ceased to be so.

Emphasis is given on the provision which excludes for disposition and concession lands which have become private property or those which a private right has been authorized or recognized. In the case of *Central Capiz v. Ramirez*,^[22] the High Court resolved that agricultural lands held in private ownership, under fee title, constitute no part of public domain. The Supreme Court adds, citing a plethora of cases, that all land to which any claims or rights of others have attached does not fall within the designation of public lands. Accordingly, a titled property

cannot be subject to a free patent application, much more a grant. If Regino were granted a free patent on the area in dispute in 1974, this means that it was not yet a private property at that time. Hence, it must not have been covered by the mother title upon which Galdino's TCT is founded otherwise, no free patent could be granted on it. A land covered by a title which is outstanding cannot be subject of an application for registration unless the existing title which has become indefeasible is first nullified by a proper court proceeding.[23] Further, Regino's grant also shows that he was indeed in possession of the property. Possession is a substantial requirement for the grant.

Herein appellants allege that Regino's title is a fraud. Still, We cannot cast doubt on the veracity of Regino's free patent because there is no proof that it was fraudulently, spuriously or illegally issued. In the case of *Lee v. dela Paz*,[24] the Supreme Court held that it can reasonably be inferred from the grant of free patents to therein petitioner that he had complied with the requirements. The Supreme Court went on to hold that the grant, having been performed in the course of the official functions of the DENR officers, enjoys the presumption of regularity. This means that, absent evidence to the contrary, the Court may presume that the DENR officers issued the free patents to petitioner only after a determination that he had duly complied with all the requirements.[25] In the same vein, herein appellants failed to convince or proffer an iota of evidence to show any illegality or irregularity in the issuance of Regino's free patent and title. Other than their own testimonies, nothing was adduced to corroborate their allegations and sustain their prayer for cancellation of Regino's title on the disputed property. In *Galang v. Reyes*,[26] the Supreme Court decreed:

"The bottom line here is that, fraud and misrepresentation, as grounds for cancellation of patent and annulment of title, should never be presumed, but must be proved by clear and convincing evidence, with mere preponderance of evidence not being adequate. Fraud is a question of fact which must be proved.

In this case, the allegations of fraud were never proven. There was no evidence at all specifically showing actual fraud or misrepresentation."

Thus, the validity of Regino's title and free patent stands.

From the foregoing, this Court finds that Regino owned Lot 3968 with an area of 53,867 sq.m. This was covered by a title originally registered in 1941. Adjacent to it is Lot F-10-01-01603-D with an area of 10,643 sq.m.; and Regino sought a free patent for this area. Regino's free patent was granted in 1974 and pursuant to that free patent, he was issued an OCT. Circa 1977,[27] Regino sold Lot 3968 to Pedrito who eventually sold it to Galdino in 1979. Lot 3968 did not include the disputed property. It was unequivocal that what was sold to Galdino was Lot 3968 covered by a title different and distinct from the area now subject of the controversy.

Moreover, We are not persuaded that the amount received by Regino was for the payment of the disputed land. It was not controverted that Regino previously owned the land that Pedrito sold to Galdino and it was not denied that Pedrito still owed Regino part of the purchase price. Clearly, the payment received and acknowledged by Regino was for Pedrito's unpaid balance and not for the disputed area. We also note the irregularity appearing on the face of the acknowledgment receipt which states: "including the vacant lot, in possession of Atty. Jardin, F-10-01-016834-D." where the word "including" appears to have been merely inserted. This phrase is crucial because it tries to establish that the sale and the payment included the disputed F-10-01-016834-D. However, the unexplained flaw weakened the receipt's credibility.

Granting that Pedrito made it appear that the sale to Galdino included the disputed lot, the latter cannot acquire a title more than that of Pedrito's. It was satisfactorily established that Pedrito does not own the land and there was no showing that he was authorized by Regino to sell it. A person can sell only what he owns or is authorized to sell and the buyer can as a consequence acquire no more than what the seller can legally transfer.[28] As held by

the Supreme Court in the case of *delos Reyes v. CA*:^[29]

"We agree with the conclusion of the Court of Appeals that Renato Gabriel was neither the owner of the subject property nor a duly designated agent of the registered owner (Daluyong Gabriel) authorized to sell subject property in his behalf, and there was also no sufficient evidence adduced to show that Daluyong Gabriel subsequently ratified Renato's act. In this connection it must be pointed out that pursuant to Article 1874 of the Civil Code, when the sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise the sale shall be void. In other words, for want of capacity (to give consent) on the part of Renato Gabriel, the oral contract of sale lacks one of the essential requisites for its validity prescribed under Article 1318, *supra* and is therefore null and void *ab initio*."

Consequently, if the disputed area was sold by Pedrito who does not own the property nor had the authority to sell it from the registered owner, the sale with respect to that portion should be nullified. The Supreme Court reiterates in *Daclag v. Macahilig*,^[30] in a contract of sale, it is essential that the seller is the owner of the property he is selling. Under Article 1458 of the Civil Code, the principal obligation of a seller is to transfer the ownership of the property sold.^[31] Also, Article 1459 of the Civil Code provides that the thing must be licit and the vendor must have a right to transfer the ownership thereof at the time it is delivered.^[32] It is an established principle that no one can give what one does not have -- *nemo dat quod non habet*. Accordingly, one can sell only what one owns or is authorized to sell, and the buyer can acquire no more than what the seller can transfer legally.^[33]

It behooves this Court why the appellants failed to have the area relocated or resurveyed. If they were in good faith in claiming that the disputed area is indeed part of the land sold to them and is within the boundaries as stated in the deed of sale and the title, they should have had a survey to bolster their claim. But they failed to do so. On the contrary, Regino's sketch plan, aside from his title, clearly showed that the disputed area is only adjacent to Lot 3968 and is not included therein.

WHEREFORE, the instant appeal is DENIED. The February 25, 1992 Decision of the Regional Trial Court, Branch 17, Cagayan de Oro City in Civil Case No. 7395 is AFFIRMED.

SO ORDERED.

Camello, (Chairperson), and Perez, JJ., concur.

[1] Rollo, pp. 52-55.

[2] Records, p. 86.

[3] Records, pp. 1-3.

[4] Records, p. 139.

[5] Records, p. 88.

[6] Records, pp. 6-12.

[7] *Ibid*, pp. 33-37.

[8] Rollo, p. 42.

[9] Rollo, p. 41.

[10] Rollo, p. 42.

- [11] Records, p. 141; Rollo, p. 43.
- [12] Ibid, pp. 46-47.
- [13] TSN, July 22, 1985, pp. 3-5.
- [14] Ibid, pp. 12, 16, 17 and 19.
- [15] Records, p. 137.
- [16] TSN, December 11, 1986, p. 64.
- [17] Ibid., p. 22.
- [18] Supra.,p. 23.
- [19] TSN, August 9, 1985, pp. 3, 7, 10-14.
- [20] TSN, June 23, 1986, pp. 26-30, 40-44.
- [21] TSN, December 11, 1986, p. 54,
- [22] G.R. No. L-16197, March 12, 1920.
- [23] G.R. No. 136280, August 30, 2001.
- [24] G.R. No. 183606, October 27, 2009.
- [25] Ibid.
- [26] G.R. No. 184746, August 8, 2012.
- [27] Records, p. 139.
- [28] Neri v. Uy, G.R. No. 194366, October 10, 2012.
- [29] G.R. No. 129103, September 3, 1999.
- [30] G.R. No. 159578, July 28, 2008.
- [31] Ibid.
- [32] Ibid.
- [33] Ibid.

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