

**MIGUEL GAMAO, ET AL., PLAINTIFFS AND APPELLANTS, VS.
DOMINADOR C. CALAMBA, ET AL., DEFENDANTS AND APPELLEES.***G.R. Nos. L-13349. September 30, 1960*

Ponente: BARRERA, J.

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From the order of the Court of First Instance of Davao (in Case No. 2033) dismissing their complaint, on the ground of their lack of legal capacity to bring the action, plaintiffs Miguel Gamao and Amando Gamao have taken this appeal.

In their complaint filed with the above-mentioned court on July 24, 1956, plaintiffs alleged that they are the only surviving children and heirs of one Sulutan Culaman, who died in Digos, Davao, in March, 1929; that at the time of his death, Culaman was the owner, possessor, and occupant, adversely, publicly, and continuously, of a parcel of land and all its improvements, designated as Lot No. 1685, Cad. 275, then covered by Free Patent Application No. 35766 filed with the Bureau of Lands, which is still subsisting; that Lot No. 1690 was originally a portion of Lot No. 1685, but was segregated and designated as such, upon the construction of the national highway at Digos; that said Lot No. 1690 continued, however, to be covered by said free patent application of Culaman; that on June 30, 1956, they, executed an extrajudicial agreement adjudicating to themselves said Lots Nos. 1685 and 1690; that sometime in 1938, while they were still minors, defendant Basilia Bualan was allowed by Benedicta Bara (second wife of Culaman) to build her house on a portion of said Lot No. 1690; that without their knowledge and consent, defendant Bualan fraudulently filed Free Patent Application No. 64345 over said Lot No. 1690, by misrepresenting that it was a portion of the lot covered by PW Patent Application No. 23316 of Benedicta Bara and that the latter relinquished in her favor said portion; that the land of Benedicta Bara covered by said Free Patent Application No. 23316 is designated as Lot No. 1686, Cad. 276, and is situated on the north of Lot No. 1685; that on December 13, 1946, defendants Dominador C. Calamba and Bualan executed a deed of sale, whereby Bualan sold to Calamba said Lot No. 1690, fraudulently misrepresenting in said deed that the same was a portion of the land of Benedicta Bara, Lot No. 1686, covered by Free Patent Application No. 23316 when it was not so; that, by virtue of said deed of sale, defendant Calamba was able to file Free Patent Application No. V-16391 covering Lot No. 1690 and, on the strength thereof, was able to mislead defendant Director of Lands to reject and cancel Free Patent Application No. 64045 of defendant Bualan and to give due course, instead, to Calamba's application; that due to said fraudulent misrepresentations of defendants Bualan and Calamba, Free Patent No. V-8578 was issued to Calamba on February 25, 1955, on the basis of which, Original Certificate of Title No. 4838 covering Lot No. 1690, was issued by the Register of Deeds of Davao on April 23, 1956; and that said Original Certificate of Title No. 4838 is void, because it was secured by defendant Calamba through fraud. Plaintiffs prayed that said certificates of title be cancelled and revoked, and that defendants Bualan and Calamba be ordered to pay to them P3,000.00 as damages and attorney's fees.

To said complaint, defendants Calamba and Bualan filed a motion to dismiss, on September 19, 1956, on the grounds that (1) plaintiffs have no legal capacity to sue, they not being the real parties in interest, and (2) the

complaint states no cause of action. Plaintiffs filed an answer (opposition) to said motion, on September 29, 1956, and a supplementary answer on October 13, 1956.

On October 17, 1956, the court dismissed plaintiffs' complaint, in an order which reads:

"ORDER

"Plaintiffs admitted in paragraph 12 of the complaint, that the patent for the land in question was issued in the name of defendant Calamba on February 25, 1955.

"Present case was filed on July 24, 1956, one year and five months after the issuance of the patent, on the ground that said patent was issued in the name of defendant Calamba through frauds and misrepresentations.

"In view of the foregoing, the Court has no jurisdiction to review the decree issued by the Director of Lands for the land in question.

"The land in question is a public land for which a patent was issued. In accordance with the provisions of the public land law, the Solicitor General is the one called upon to prosecute and seek the annulment of the patent issued through fraud and misrepresentations.

"The plaintiffs have no legal personality to prosecute the present case.

"WHEREFORE, the Court finding the motion to dismiss well taken, orders the dismissal of this case, without special pronouncement as to the costs of the proceedings.

"SO ORDERED."

From this order of the lower court, plaintiffs have appealed to us.

Plaintiffs claim that the lower court erred in holding that they have no legal capacity to bring the action and, consequently, in dismissing their complaint.

The lower court correctly dismissed the complaint. It appears from the face thereof that the plaintiffs have as yet acquired no title to the lot in question to entitle them to sue in their own right. They are mere applicants thereto, their application (Free Patent Application No. 35766) being still pending approval by the Director of Lands. The land subject of their application which, allegedly, includes the portion (Lot No. 1690) titled in the name of defendant Calamba, is still public land and, therefore, subject to the exclusive and executive control and jurisdiction of the Director of Lands. Nowhere is it alleged in their complaint that they have called the attention of the Director of Lands to the overlapping of their application and that of defendant Calamba which became the basis of the latter's patent and subsequent certificate of title; much less that such conflict has already been investigated and decided by that official. In other words, plaintiffs have not exhausted their administrative remedies. The mere fact that a patent and a title have already been issued to defendant Calamba does not preclude administrative investigation by the Director of Lands, who, if he finds that there was fraud in obtaining the same, may himself or in representation of the Republic of the Philippines file an appropriate action for the cancellation of the patent and title or for the reversion of the land to the public domain, as the case may be. As it is, Calamba's additional contention that the complaint alleges no cause of action is likewise correct.

Wherefore, the order appealed from is hereby affirmed, with costs against the plaintiffs-appellants. So ordered.

Bengzon, Bautista Ahgelo, Concepcion, Reyes, J. B. L., Gutierrez David, Paredes, and Dizon, JJ., concur.

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