

DIRECTOR OF LANDS, PETITIONER-APPELLANT, VS. JOSE TAN, CLAIMANT-APPELLEE, VS. FE MISBA SALI, CLAIMANT.

Ponente: LOPEZ, J.

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LOPEZ, J.:

This is an appeal under Rule 41 of the Rules of Court filed by oppositor-appellant Director of Lands through the Office of the Solicitor General (OSG) to assail the October 11, 2010 Decision[1] of the Regional Trial Court of Pagadian City, Branch 18,[2] in Cadastral Case No. N-31. The assailed decision decreed thus:

WHEREFORE, the Court renders judgment adjudicating Cadastral Lot No. Ts-09-06-000001 to claimant Jose Tan, married to Camila M. Tan.

The claim of claimant Fe Misba Sali is hereby Dismissed for lack of merit.

Let the corresponding decree be issued thirty (30) days after his (sic) decision shall became final.

No pronouncement as to cost.

SO ORDERED.

Culled from the records are the salient facts of the case:

Sometime in 1993, both claimant-appellee Jose Tan (Tan) and claimant Fe Misba Sali (Sali) filed their respective answers to the contested petition for cadastral claims before the Regional Trial Court of Pagadian City pursuant to Section 48(b) of Commonwealth Act (Com. Act) No. 141 or the Public Land Act, as amended by Presidential Decree No. 1073, for confirmation of an imperfect title and the issuance of a certificate of title over Lot No. 563, Ts-09-06-000001 of Pagadian Cadastre, situated in Kawit, Pagadian City.

Appellee Tan claimed that he has been in possession of the subject land in the concept of an owner for over thirty (30) years including that of his predecessors-in-interest and that he declared the subject property in his name for taxation purposes. He further claimed that he acquired the property by virtue of an Affidavit of Confirmation and Relinquishment executed by Jose Mirabueno (Mirabueno), the original claimant of the land.[3]

On the other hand, claimant Sali claimed that she has been in possession of the property as an owner thereof for over thirty (30) years including that of her predecessors-in-interest and that she has been paying the taxes due thereon. She likewise claimed that she acquired the subject property by actual occupation from Daniel Sali for value and in good faith.[4]

Records of the case however show that claimant Sali was previously declared in default by the court a quo but the default order was later on lifted upon motion of claimant Sali; hence, she was allowed to file her answer.[5] Subsequently, despite the previous default order, claimant Sali still failed to attend the court hearings despite due notice thereof. As a result, appellee Tan moved that he be allowed to present his evidence ex-parte and to which the court a quo granted on January 10, 2007.[6]

Appellee Tan presented both testimonial and documentary evidence. His testimonial evidence consists of his testimony and that of his mother Marcela Tan and his neighbor Cipriano Perez. From their testimonies, it appeared that the original survey claimant of the subject property is a certain Jose Mirabueno (Mirabueno). Subsequently, the said property was transferred by Mirabueno to Alberto Perdiguez (Perdiguez), the father-in-law of Marcela Tan. Thereafter, Perdiguez relinquished his right over the subject property in favor of Marcela Tan and the latter consequently transferred her rights and interests over Lot No. 563 in favor of her son, appellee Tan.

On the other hand, appellee Tan's documentary evidence consists of the following:

- 1) Affidavit of Quitclaim and Confirmation dated March 25, 1999, executed by Jose Mirabueno in favor of appellee Tan;[7]
- 2) Tax declaration of appellee Tan covering the subject property for the year 1994;[8]
- 3) Realty Property Tax Receipts of appellee Tan for the subject property dated May 28, 1997;[9]
- 4) Certification issued by the City Treasurer of Pagadian City showing payments of appellee Tan over the subject property for the year 1997;[10]
- 5) Real Property Tax Receipts of appellee Tan for the subject property dated May 10, 2005;[11] and
- 6) Real Property Tax Receipts of appellee Tan for the subject property dated January 29, 2007.[12]

Thereafter, appellee Tan was directed to formally offer his exhibits within fifteen (15) days from notice.[13] However, upon motion of appellee Tan, he was given an additional period of twenty (20) days to file his written offer of exhibits.[14]

This notwithstanding, no written offer was filed by appellee Tan even after the lapse of more than a year. Thus, the court a quo issued an order dismissing the case without prejudice.[15]

Appellee Tan immediately moved for the reconsideration of the order dismissing his case.[16] Consequently, in an order dated September 3, 2010, the court a quo recalled and vacated its previous order dismissing the case and instead, submitted the case for decision.[17]

On October 11, 2010, the court a quo issued the assailed decision adjudicating Cadastral Lot No. 563, Ts-09-06-000001 to appellee Tan and dismissing the claim of claimant Sali.

Hence, the instant appeal interposed by the Director of Lands through the OSG.

Assignment of Error

Appellant OSG assigned the lone error committed by the court a quo, thus:

THE REGIONAL TRIAL COURT ERRED IN RULING THAT THE CLAIMANT JOSE TAN, JR. HAS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE HIS AND THAT OF HIS PREDECESSORS-IN-INTEREST'S POSSESSION OVER LOT NO. 563 WITHIN THE PERIOD AND IN THE CONCEPT REQUIRED BY LAW.

This Court's Ruling

We find the appeal meritorious.

Appellant OSG contends that appellee Tan failed to establish that he and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the subject property – Lot 563, since June 12, 1945. It argues that appellee Tan traced his possession over the subject property from the time he built

his house thereon but he tacked it to the possession of Mirabueno and Perdiguez who had supposedly been in possession since 1960. However, neither the testimonial nor the documentary evidence presented by appellee Tan during the ex-parte hearing clearly and conclusively establish the following facts, namely, the year Mirabueno began his possession over the subject property; the year Mirabueno's possession ended and the year Perdiguez's possession began; the mode of acquisition of Perdiguez over the subject property from Mirabueno; and appellee Tan's mode of acquisition from Perdiguez. The allegation of appellee Tan that he bought Lot No. 563 from his mother Marcela Tan, who likewise supposedly bought the same property from Mirabueno is self-serving and uncorroborated. Hence, appellee Tan's alleged possession over Lot No. 563 is not the "possession" contemplated by the Public Land Act which could ripen into ownership.

Appellant OSG likewise contends that "possession under a bona fide claim of ownership for at least 30 years" as contemplated under Section 48(b) of Com. Act No. 141, as amended by RA 1942 was further amended by Section 4 of PD No. 1073 by substituting the phrase "for at least thirty (30) years" with "since June 12, 1945." Likewise, under Section 14(1) of PD No. 1529[18] it was provided therein that only "[T]hose who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier" may file an application for registration of title. The OSG argues that in this case, there is no evidence that clearly and convincingly shows that Lot No. 563 forms part of the disposable and alienable agricultural lands of the public domain and that appellee Tan's possession together with his predecessors-in-interest were done in "open, continuous, adverse and actual possession" since June 12, 1945 or earlier.

We find the contentions of appellant OSG tenable.

The Com. Act No. 141 or the Public Land Act, governs the classification and disposition of lands of the public domain. Under Section 11 thereof, one of the modes of disposing of public lands suitable for agricultural purposes is by "confirmation of imperfect or incomplete titles".[19] On the other hand, Section 48 provides the grant to the qualified possessor of an alienable and disposable public land. Thus:

SEC. 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

(a) Those who prior to the transfer of sovereignty from Spain to the United States have applied for the purchase, composition or other form of grant of lands of the public domain under the laws and royal decrees then in force and have instituted and prosecuted the proceedings in connection therewith, but have with or without default upon their part, or for any other cause, not received title therefor, if such applicants or grantees and their heirs have occupied and cultivated said lands continuously since the filing of their applications.

(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agriculture, whether disposable or not, under a bona fide claim of ownership for at least 30 years shall be entitled to the rights granted in sub-section (b) hereof.

Consequently, Presidential Decree No. 1073 (PD No. 1073), which was issued on January 25, 1977, deleted subsection (a) and amended subsection (b) as follows:

SECTION 4. The provisions of Section 48 (b) and Section 48 (c), Chapter VIII of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant thru himself or thru his predecessor-in-interest under a bona fide claim of ownership since June 12, 1945.

Likewise, Presidential Decree No. 1529 (PD No. 1529), otherwise known as the “Property Registration Decree,” which was enacted on June 11, 1978, codified all the laws relative to the registration of property. Section 14 thereof provides inter alia:

Section 14. Who may apply. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

From the aforequoted provisions, it is explicit that Section 14(1) of PD No. 1529 in relation to Com. Act No. 141, as amended, an applicant for judicial confirmation of imperfect and incomplete title to an alienable and disposable land in the public domain must prove that he and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of an alienable and disposable land under a bona fide claim of ownership since June 12, 1945, or earlier. On the other hand, under Section 14(2) of PD No. 1529, in relation to Com. Act No. 141, as amended, the applicant must prove that he and his predecessors-in-interest have been, prior to the effectivity of PD No. 1073 on January 25, 1977, in open, continuous, exclusive and notorious possession and occupation of agricultural lands of public domain, under a bona fide claim of acquisition of ownership for at least 30 years, or at least since January 24, 1947.[20]

Stated differently, when PD No. 1073 was passed on January 25, 1977, the requirement for possession and occupation for a period of 30 years was changed to possession and occupation since June 12, 1945, or earlier. Hence, when an application under Section 48(b) of Com. Act No. 141, as amended, is filed after the promulgation of PD No. 1073, the applicant should allege and prove possession and occupation that dated back to June 12, 1945, or earlier. Nonetheless, vested rights may have been acquired under Section 48(b) prior to its amendment by PD No. 1073. However, it must be shown that the applicant’s possession and occupation is at least 30 years already prior to the passage of PD No. 1073.

It should be stressed also that possession alone is insufficient to acquire title to alienable lands of the public domain because the law requires possession and occupation. As held in *Republic of the Philippines v. Alconaba*: [21]

The law speaks of possession and occupation. Since these words are separated by the conjunction and, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word occupation, it seeks to delimit the all encompassing effect of constructive possession. Taken together with the words open, continuous, exclusive and notorious, the word occupation serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. Actual possession of a land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property.

In the case at bar, appellee Tan filed his application for registration of title or for judicial confirmation of his imperfect title in 1993 alleging, among others, that he and his predecessors-in-interest have been in open, continuous, exclusive and adverse possession of Lot No. 563 for more than 30 years already because his predecessors-in-interest started to possess and occupy the subject property in 1960. It is important to note however, that irrespective of whether Section 14(1) or Section 14(2) of PD No. 1529 is to be applied in his case, appellee Tan failed to establish by clear and convincing evidence that he and his predecessors-in-interest had complied with the prescribed statutory period under the law to warrant the confirmation of his imperfect title. Stated differently, appellee Tan cannot register the subject property in its name on the basis of either Section 14 (1) or Section 14 (2) of P.D. No. 1529.

If Section 14(1) of PD No. 1529 in relation to Section 48(b) of Com. Act No. 141, as amended, is to be applied, appellee Tan must prove that he and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of an alienable and disposable land under a bona fide claim of ownership since June 12, 1945, or earlier. As the law now stands, a mere showing of possession for thirty (30) years or more is not sufficient. It must be shown, too, that possession and occupation had started on June 12, 1945, or earlier.[22] In this case however, appellee Tan failed to establish the statutory period of his possession and occupation over Lot No. 563 and in fact, he himself alleged that his predecessors-in-interest had been in possession of the subject property only in 1960. Thus, failure of appellee Tan to prove that he and his predecessors-in-interest possessed and occupied Lot No. 563 in accordance with the mandate of Section 14(1) of PD No. 1529, the court a quo should not have adjudicated Lot No. 563 to him.

On the other hand, even if Section 14(2) of PD No. 1529 in relation to Section 48(b) of Com. Act No. 141, as amended, is to be applied, appellee Tan still failed to establish that his possession and that of his predecessors-in-interest is at least 30 years already or that he and his predecessors-in-interest had acquired a vested rights over the subject property after being in possession of the property for at least 30 years prior to the effectivity of PD No. 1073 on January 25, 1977. Settled is the rule that for one to invoke Section 48(b) and claim an imperfect title over an alienable and disposable land of the public domain on the basis of a 30-year possession and occupation, it must be demonstrated that such possession and occupation commenced on January 24, 1947 and the 30-year period was completed prior to the effectivity of P.D. No.1073.[23] In this case, there was no evidence to show that appellee Tan and his predecessors-in-interest have completed the 30-year period before January 24, 1977.

It should be noted that a judicious review of the records reveals that except for the bare allegation of appellee Tan that he and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation over Lot No. 563, there is no evidence presented by appellee Tan to clearly and sufficiently establish the prescribed statutory period. As correctly observed by appellant OSG, there was no showing at all when Mirabueno, the alleged original survey claimant and appellee Tan's predecessor-in-interest, started to occupy the subject property and when Mirabueno subsequently relinquished his right and interest over the said property in favor of Perdiguez, to whom appellee Tan's mother allegedly acquired the property. Appellee Tan's allegation on his alleged possession and occupation remains unsubstantiated and uncorroborated.

Corollarily, the Affidavit of Quitclaim and Confirmation executed by Mirabueno in 1999 in favor of appellee Tan merely shows that Mirabueno relinquished his right and interest over Lot No. 563 in favor of appellee Tan through her mother Marcela Tan, being a claimant also of the subject property. However, nowhere in the said affidavit that Mirabueno mentioned the year he started possessing and occupying the subject property and by which appellee Tan could tack his possession and occupation. Also, appellee Tan's mother testified that it was actually Perdiguez to whom Mirabueno relinquished his right and interest over the subject property and to whom

she consequently acquired. Yet, there was no evidence on records to show when Perdiguez actually acquired the property from Mirabueno and when appellee Tan's mother subsequently acquired the same from Perdiguez. Thus, appellee Tan was not able to clearly and sufficiently establish when his predecessors-in-interest started to occupy and possess the subject property for purposes of complying with the prescribed statutory period.

Likewise, the tax declaration and tax receipts presented by appellee Tan are insufficient to establish the number of years he and his predecessors-in-interest possessed and occupied Lot No. 563. It should be noted that the tax declaration presented by appellee Tan for the subject property was only for the year 1994 and his tax receipts show that he started paying the taxes due thereon only in 1994. He did not even present the tax declaration or the tax receipts of his predecessors-in-interest in order to show their previous possession and occupation of the subject property and in order that he could tack his possession and occupation to the said land.

Settled is the rule that tax declarations and receipts are not conclusive evidence of ownership. At most, they constitute mere prima facie proofs of ownership of the property for which taxes have been paid. In the absence of actual, public and adverse possession, the declaration of the land for tax purposes does not prove ownership.[24] They may be good supporting or collaborating evidence together with other acts of possession and ownership; but by themselves, tax declarations are inadequate to establish possession of the property in the nature and for the period required by statute for acquiring imperfect or incomplete title to the land.[25]

Furthermore, anent the requirement that the property to be registered must be an alienable and disposable land of the public domain, there is no showing at all, in this case, that Lot No. 563 is an alienable and disposable land of public domain. It is important to note that this requirement was not established before the court a quo considering that appellee Tan even failed to establish when Lot No. 563 was declared as such. He even failed to sufficiently show that at the time he filed his application for registration with the court a quo, Lot No. 563 was already declared as an alienable and disposable land of the public domain.

Settled is the rule that in the absence of incontrovertible evidence to prove that the subject property is already classified as alienable and disposable, this Court must consider the same as still inalienable public domain. Verily, the rules on the confirmation of imperfect title do not apply unless and until the land subject thereof is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain. [26]

In the case of *Spouses Tan v. Republic of the Philippines*,[27] the Supreme Court explained the importance of establishing first that the land applied by the claimant is an alienable and disposable land of public domain, to wit:

The Court notes that Presidential Decree No. 1073, amending the Public Land Act, clarified Section 48, paragraph "b" thereof, by specifically declaring that it applied only to alienable and disposable lands of the public domain. Thus, based on the said provision of Commonwealth Act No. 141, as amended, the two requisites which the applicants must comply with for the grant of their Application for Registration of Title are: (1) the land applied for is alienable and disposable; and (2) the applicants and their predecessors-in-interest have occupied and possessed the land openly, continuously, exclusively, and adversely since 12 June 1945.

To prove that the land subject of an application for registration is alienable, an applicant must conclusively establish the existence of a positive act of the government such as a presidential proclamation or an executive order or administrative action, investigation reports of the Bureau of Lands investigator or a legislative act or statute. Until then, the rules on confirmation of imperfect title do not apply. (*Italics added.*)

Verily, failure to show that the land subject of an application for registration is alienable and disposable land of the public domain, the rules on confirmation of imperfect title do not apply.

In sum, it is incumbent upon appellee Tan, having applied for registration of title under Com. Act No. 141, as

amended by PD No. 1073, to carefully know the requirements of the law. However, appellee Tan did not present a single evidence to prove the alienability and disposability of the subject property. Worst, the court a quo in granting appellee Tan's application for registration of title, did not even consider this requisite.

Settled is the rule that the burden of proof in land registration cases rests on the applicant who must show by clear, positive and convincing evidence that his alleged possession and occupation of the land is of the nature and duration required by law.[28] Unfortunately, in this case, appellee Tan's evidence does not constitute the "well-nigh incontrovertible" evidence necessary in cases of this nature.

Thus, the court a quo erred in adjudicating Lot No. 563 to appellee Tan.

This notwithstanding, appellee Tan is not precluded from availing himself of the other modes for acquiring title to alienable and disposable lands of the public domain for which they may be qualified under the law. In *Director of Lands v. Court of Appeals*,[29] the Supreme Court held that a judicial declaration that a parcel of land is public, does not preclude even the same applicant from subsequently seeking a judicial confirmation of his title to the same land, provided he thereafter complies with the provisions of Section 48 of Com. Act No. 141, as amended, and as long as said public land remains alienable and disposable.

WHEREFORE, premises considered, the instant appeal is hereby GRANTED. The October 11, 2010 Decision of the Regional Trial Court of Pagadian City, Branch 18, in Cadastral Case No. N-31 is REVERSED and SET ASIDE. The cadastral claim of claimant-appellee Jose Tan over Lot No. 563, Ts-09-06-000001 situated in Kawit, Pagadian City is DENIED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Camello, J., Ch., and Inting, JJ., concur.

[1] Original Records, pp. 49-53.

[2] Penned by Hon. Reinerio (Abraham) B. Ramas, Presiding Judge.

[2] Answer, Id., pp. 1-3.

[4] Answer, Id., p. 5.

[5] Order dated September 24, 1993, Id., p. 6.

[6] Order dated January 10, 2007, Id., pp. 12-13.

[7] Id., p. 17.

[8] Id., p. 18.

[9] Id., pp. 19-20.

[10] Id., p. 21.

[11] Id., pp. 22-23.

[12] Id., p. 24.

[13] Order dated April 8, 2009, Id., p. 34.

[14] Order dated June 5, 2009, Id., p. 39.

[15] Order dated August 10, 2010, Id., p. 41.

[16] Id., pp. 46-47.

[17] Id., p. 48.

[18] Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes, otherwise known as the Property Registration Decree.

[19] Sec. 11. Public lands suitable for agricultural purposes can be disposed of only as follows, and not otherwise:

- (1) For homestead settlement;
- (2) By sale;
- (3) By lease;
- (4) By confirmation of imperfect or incomplete titles;
 - (a) By judicial legalization;
 - (b) By administrative legalization (free patent).

[20] Abejaron v. Nabasa, 411 Phil. 552 (2001), cited in Republic v. Espinosa, G.R. No. 171514, July 18, 2012.

[21] G.R. No. 155012, April 14, 2004.

[22] Republic v. San Lorenzo Development Corporation, G.R. No. 170724, 29 January 2007.

[23] Republic v. Espinosa, G.R. No. 171514, July 18, 2012.

[24] Serina v. Caballero, G.R. No. 127382, August 17, 2004.

[25] Spouses Tan v. Republic, G.R. No. 177797, December 4, 2008.

[26] Valiao v. Republic, G.R. No. 170757, November 28, 2011.

[27] G.R. No. 177797, December 4, 2008.

[28] Ong v. Republic, G.R. No. 175746, March 12, 2008.

[29] G.R. No. 45828, June 1, 1992, cited in Valiao v. Republic, Supra, note no. 26.

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