

**FRUCTUOSO GARCIA, ALFREDO SUERTE, AND CAMILO SABLAY,
PETITIONERS-APPELLANTS, VS. HON. ABELARDO APORTADERA, AS
PRESIDING JUDGE, CFI, COTABATO, BR. IV, AURELIO AMPIG, THE
DIRECTOR...**

G.R. No. L-34122. August 29, 1988

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is a petition for certiorari to review the order dated May 3, 1968 of the then Court of First Instance of Cotabato dismissing the complaint for annulment of a homestead patent title.

On October 12, 1966, the petitioners filed in the Court of First Instance of Cotabato a petition to annul Homestead Patent No. 112146 and cancel the patent title, OCT No. P-26515, which had been issued to the homesteader Aurelio Ampig for a 4.4061-hectare parcel of land. The petitioners alleged that the land was part of the 24-hectare area in Barrio Edzeniben, Sultan sa Barongis, Cotabato, subject of the homestead application of their father, Marcelo Garcia. After the death of Marcelo Garcia his son, petitioner Fructuoso Garcia, renewed on October 12, 1946 his father's homestead application but in his own name. Because of failing health, Fructuoso Garcia allegedly requested Jesus Borres to cultivate the land. Borres allegedly hired other persons, among them respondent Aurelio Ampig, to work as tenants on the land. Ampig allegedly "surreptitiously and fraudulently," filed in his own name on May 12, 1955, a homestead application over Lot 4654, Pls-72. Ampig's application was allegedly denied by the Bureau of Lands on March 13, 1956, on the ground that the homestead had already been applied for by Marcelo Garcia. However, nine (9) years later, on October 25, 1965, "either through mistake, oversight, or plain inadvertence, by the Director of Lands," Homestead Patent No. 112146 covering an area of 4.4061 hectares was issued to Ampig. A portion of the land subject of Fructuoso Garcia's application was transferred by Garcia to Alfredo Suerte who also later transferred it to Camilo Sablay. Both transferees are co-petitioners in this case.

In his answer, the Director of Lands averred that Homestead, Patent No. 19-3568 of Aurelio Ampig was filed in the ordinary course of official business on May 12, 1955. Fructuoso Garcia filed a telegraphic protest on March 2, 1965 or ten years later. He was advised to file a protest in due form, but he failed to do so. The Chief of the Legal Division of the Bureau of Lands, in a letter dated September 29, 1965, informed plaintiff Fructuoso Garcia that for failure to file his protest, despite the lapse of about seven (7) months, his claim to the land would be dismissed and disregarded and the matter closed insofar as the Bureau of Lands was concerned. No reply was received from Garcia so Homestead Patent No. V-112146 was issued to Aurelio Ampig on October 25, 1965 after he had complied with the legal requirements. The Director further alleged that the complaint was premature as the plaintiff had not exhausted his administrative remedies; that findings of facts of the Director of Lands; when confirmed by the Secretary of Agriculture and Natural Resources, are not subject to review by the courts; hence, the action for review and annulment of homestead patent is beyond the jurisdiction of the court.

For his part, Ampig alleged that as the land in question was formerly public land which he acquired under the provisions of the Public Land Law, Garcia's, proper remedy is to file a protest against his (Ampig's) application; that the proper authority to institute the action for annulment of Ampig's patent is the Solicitor General; that the Secretary of Agriculture and Natural Resources, the official responsible for the issuance of the patent to respondent Aurelio Ampig, is an indispensable party in this case, as no complete relief can be obtained without him; and that the venue is improperly laid as the Director of Lands holds office in Manila.

The respondent Judge to hold a hearing on the affirmative defenses of the Director of Lands and Ampig. On May 3, 1968, he dismissed the complaint on the grounds that the petitioners failed to exhaust their administrative remedies in the Bureau of Lands and that the petitioners are not the proper parties to bring the action, the suit being essentially one for reversion under Section 101 of the Public Land Act, which only the Solicitor General can initiate.

The dispositive portion of the assailed order dated May 3, 1968 states as follows:

"WHEREFORE, finding the contention of the defendants in their affirmative defenses to be meritorious, the complaint is dismissed with costs against, the plaintiffs.

"SO ORDERED." (p. 32, Rollo.)

The petitioners filed a motion for reconsideration, but it was denied on February 25, 1971 by the trial court which pointed out that:

"Paragraph 6 (of the motion for reconsideration) clearly states that the petitioners have a pending petition before the Bureau of Lands at Manila for the review and cancellation of the patent same land, and in paragraph 7, petitioners made representations before the Solicitor General to take the appropriate step in connection with the alleged erroneous issuance of the title in favor of the respondent, Aurelio Ampig.

"x x x this Court has more reason not to interfere with the administrative proceeding pending in the said bureau deciding the same question.

"x x x, it shows that the petitioners believe that it is the government through the Solicitor General which could prosecute as a party having the legal personality to institute an action of the nature contemplated by the petitioners." (p. 38, Rollo.)

Hence, this petition for certiorari alleging that the lower court erred:

- In dismissing the petition for lack of jurisdiction because the petitioners failed to exhaust their administrative remedies;
- In holding that only the Solicitor General may file an action for annulment of the private respondent's homestead patent and title; and
- In not considering the complaint as an action for reconveyance. (p. 147, Rollo.)

The trial court's ruling that the petitioners' action was premature for failure to exhaust their administrative remedies in the Bureau of Lands to consistent with established doctrine that:

"x x x where a party seeks for cancellation of a free patent with the Bureau of Lands, he must pursue his action in the proper Department and a review by the courts will not be permitted unless the administrative remedies are first exhausted. x x x. The doctrine of exhaustion of administrative remedies applied with greater force in this case since the Bureau of Lands has not yet - as of the time of this appeal - even rendered a decision on the matter." (Pestanas vs. Dyogi, 81 SCRA 594; See also Miguel, et al. vs. Vda. de Reyes, et al., 93 Phil. 542; Rellin vs. Cabigas and Director of Lands, 109 Phil. 1128.)

Respondent Judge was correct in holding that petitioners' action was in effect an action for reversion of a homestead under Section 101 of the Public Land Act which provides:

"Sec. 101. - All actions for the reversion to the Government of lands of public domain or improvements thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Commonwealth of the Philippines."

The action should be in the name of the Government for even if Ampig's homestead patent were annulled for fraud, it would not necessarily follow that the court may award the land to the petitioner. The courts have no authority to do that for, as provided in the Public Land Act, the Director of Lands is the official vested with direct executive control of the disposition of the lands of the public domain.

"SEC. 4. Subject to said control, the Director of Lands shall have direct executive control of the survey, classification, lease, sale or any other form of concession or disposition and management of the land of the public domain, and his decisions as to questions of fact shall be conclusive when approved by the Secretary of Agriculture and Commerce." (Commonwealth Act No. 141.)

Hence, this Court in *Sumail vs. Court of First Instance of Cotabato*, 96 Phil. 946, held:

"x x x. Consequently, even if the parcels were declared reverted to the public domain, Summil does not automatically become owner thereof. He is a mere public land applicant like others who might apply for the same." (See also *Lucas vs. Durian*, 102 Phil. 1157; *Director of Lands vs. Jugado*, 2 SCRA 32; *Gacayan vs. Leaño*, 121 SCRA 260.)

This action may not be treated as an action for reconveyance for that is the remedy of an owner whose land has been erroneously registered in the name of another. The petitioner is not the owner of the homestead in question. He is only an applicant for a homestead patent.

WHEREFORE, the petition for certiorari is denied for lack of merit.

SO ORDERED.

Narvasa, Cruz, and Medialdea, JJ., concur.

Gancayco, J., on leave.

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