

**THE DIRECTOR OF LANDS, PETITIONER, VS. IDA L. DANO,
REPRESENTING THE HEIRS OF FRANCISCO P. DANO, AND THE
COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL,
RESPONDENTS.**

G.R. No. L-31749. February 21, 1980

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Petitioner seeks from us, by way of Certiorari, the annulment of the Decision of respondent Court of First Instance of Misamis Occidental, dated October 23, 1969, decreeing the registration of a parcel of land in the name of the Heirs of Francisco P. Dano in Land Registration Case No. N-60, LRC Record No. 36486, as well as its Orders denying petitioner's two Motions for Reconsideration.

The records of the case disclose the following antecedents: On January 8, 1969, respondent Ida L. Dano, representing the Heirs of the deceased Francisco P. Dano, filed with respondent Court an application for registration of a parcel of land containing an area of 5,518 square meters, situated at Sinonoc, Sinacaban, Misamis Occidental, with the prayer that "in case the land may not be registered as private land, she requests that her imperfect or incomplete title to the property be confirmed in the names of the heirs of Francisco P. Dano." [1]

The Director of Lands, through the Assistant Provincial Fiscal, filed an Opposition contending that the land sought to be registered by the applicant is a foreshore land forming part of the public domain and cannot be the subject of private ownership. [2]

On August 12, 1969, the occupants-oppositors, through their counsel, also filed their written Opposition reiterating the public character of the land sought to be registered. This Opposition was dismissed, however, by the trial Court on the ground that since by oppositors' own admission the land is public, they are bereft of personality with which to interpose any objection.

After due hearing, the Court *quo* rendered its Decision on October 23, 1969, decreeing the registration of subject property in the name of the Heirs of Francisco P. Dano, thus:

"It having been duly proved by the evidence presented by the petitioner that the land was acquired and occupied by her predecessor-in-interest and was possessed, which possession dates back more than 30 years, it is hereby decreed that the property be adjudged and registered in the name of the heirs of Francisco Dano, residents of Jimenez, Misamis Occidental, and 30 days after this decision shall have become final, let the corresponding decree be issued to the aforesaid heirs of Francisco Dano, namely: Faye Dano, Ida Dano, Emma Tolentino, Francis Dano and Leo Dano, all of legal age, Filipinos and residents of Jimenez, Misamis Occidental.

"SO ORDERED." [3]

Not in accord with the ruling of respondent Court, petitioner moved for reconsideration on November 14, 1969 on

the ground that applicant-respondent failed to prove a registerable title. And, for the first time, petitioner argued that respondent filed her application for registration only on January 8, 1969, which was beyond the period fixed by Sections 45 and 47 of Commonwealth Act No. 141, as amended by Republic Act No. 2061, which was "not to extend beyond December 31, 1968".

In denying the aforementioned Motion for Reconsideration, respondent Court, in its Order dated December 6, 1969, invoked Section 2, Rule 9 of the Rules of Court to the effect that defenses and objections not pleaded either in a Motion to Dismiss or in the Answer are deemed waived, and cited previous rulings of the Supreme Court, among them, *Vicente vs. Lucas, et al.*, (95 Phil. 716 [1954]), which held that "where the defendants never pleaded the statute of limitations they are deemed to have waived it and it is error for the lower Court to dismiss the proceeding on that ground."^[4]

Petitioner filed a Second Motion for Reconsideration alleging mainly that the issue involved being jurisdictional, it can be raised at any stage of the proceeding, and cannot be waived; that there is no waiver to a non-existing right nor to one contrary to law; and that an officer of the Government cannot waive the right of the State.

Again, the Second Motion for Reconsideration was denied by respondent Court on January 8, 1970, premised on the following considerations:

"The Court maintains that Sections 45 and 47 of Public Land Act No. 141 as amended by Republic Act No. 2061 is not jurisdictional but clearly a limitation to file application. A reading of said sections will readily show that a time limit was fixed for the filing of applications under that Chapter which shall not extend beyond December 31, 1968.

"The contention of the Assistant Provincial Fiscal that the Court of First Instance is of limited jurisdiction when it acts as a Land Court is not in point. What is to be determined is the context of Sections 45 and 47 of Public Land Act 141 as amended by Republic Act 2061. Indeed, the Provincial Fiscal admitted that the same section is a legal limitation.

"It being, therefore, a limitation, the same is a defense or objection to the application which, as previously ruled by this Court is subject to the provisions of Section 2, Rule 9 of the Rules of Court."^[5]

Petitioner elevated the case to this Court on appeal. However, considering that only a question of law is involved and that Republic Act No. 5440 is applicable, we required the filing of a Petition for Review in our Resolution dated March 16, 1970.

The sole issue raised is the determination of whether or not respondent Court had jurisdiction to entertain this application for registration of land filed after December 31, 1968, the deadline set in Republic Act No. 2061 for filing applications for the judicial confirmation of imperfect or incomplete titles to land.

Section 47 of Commonwealth Act No. 141, as amended by Republic Act No. 2061, approved on June 13, 1958, provides:

"SEC. 47. The persons specified in the next following section are hereby granted time, not to extend beyond December thirty-one, nineteen hundred and sixty-eight within which to take advantage of the benefit of this chapter: Provided, That the several periods of time designated by the President in accordance with section forty-five of this Act shall apply also to the lands comprised in the provisions of this chapter, but this section shall not be construed as prohibiting any of said persons from acting under this chapter at any time prior to the period fixed by the President."

The "next following section" referred to is section 48 of Commonwealth Act No. 141, as amended by Republic Act No. 1942, which reads as follows:

"Sec. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such land 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:

xxx xxx xxx

(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 of ownership, for at least thirty (30) 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."

We agree with respondent Court that the period fixed by Section 47 of the Public Land Act (CA 141), as amended, is not jurisdictional but is more of a time limitation. As such, it is a defense or objection which should have been set up either in a Motion to Dismiss or in an Answer.[6] Inasmuch as petitioner had never pleaded the statute of limitations, he is deemed to have waived the same.[7]

"The rule is that where the defendants never pleaded the statute of limitations they are deemed to have waived it and it is error for the lower court to dismiss the proceeding on that ground." [8]

The defense of prescription cannot be pleaded for the first time at the trial or on appeal. Petitioner raised that issue for the first time only in his Motion for Reconsideration filed on November 14, 1969. This cannot be sanctioned.

"The claim of prescription cannot be raised for the first time on appeal, and much less in a motion for reconsideration like in the instant case. x x x Petitioners having failed to plead in their answer the defense of prescription, the same cannot now be raised for the first time." [9]

But even bearing in mind that prescription does not run against the State (Art. 1108 (4), Civil Code) and that the rights of the State may not be waived by mistakes of officers entrusted with the exercise of such rights (Lewin vs. Galang, 109 Phil. 1041 [1960]), yet, the intendment of the lawmaker to accord as much leeway as possible to applicants for judicial confirmation of im-perfect or incomplete titles is evident from the statutory history of section 47 of the Public Land Act. In the original text, the time limitation was not to extend beyond December 31, 1938. An amendment introduced by Commonwealth Act 292, section 2, approved on June 9, 1938, extended the expiry date to December 31, 1941. Subsequently, section 1 of Republic Act No. 107, approved on June 2, 1947, further extended the time limit to December 31, 1957. Republic Act No. 2061, approved on June 13, 1958, again prolonged the period to December 31, 1968. Still later, by virtue of Republic Act No. 6236, approved on June 19, 1971, the time prescribed was extended to December 31, 1976. Again, only quite recently, on January 25, 1977, PD No. 1073 lengthened the cut-off date to December 31, 1987.

Considering the obvious intent of the law as shown by the several extensions granted, it should be held that the extension granted by RA No. 6236 up to December 31, 1976 retroacted to and covered the application filed by private respondent on January 8, 1969, or during the intervening period from January 1, 1969 up to December 31, 1976.

As we held in *Director of Lands vs. Abairo, et als.* (90 SCRA 422 [1979]), speaking through Mr. Justice Felix V. Makasiar, and the facts of which are almost on all fours with the case at bar:

"Respect should be given to the obvious intention of the lawmaker in extending the period for filing such applications time and time again, to give full opportunity to those who are qualified under the law to own

disposable lands of the public domain and thus reduce the number of landless among the citizenry."

Premised upon the foregoing considerations, the jurisdiction of respondent Court in entertaining the instant application for registration and resolving the same, must be upheld.

Petitioner has raised no issue on the merits.

WHEREFORE, the instant Petition is dismissed, and the challenged Decision, dated October 23, 1969, and Orders, respectively dated December 6, 1969 and January 8, 1970, issued by respondent Court, are hereby declared valid for having been within the jurisdictional competence of respondent Court to promulgate.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.

[1] Rollo, p. 43.

[2] Original Exhibits, Vol. III, p. 38.

[3] Decision, p. 6.

[4] Record on Appeal, p. 16.

[5] *ibid.*, p. 21.

[6] Section 2, Rule 9, Rules of Court.

[7] *Ibid.*

[8] *Vicente vs. Lucas, et al.*, 95 Phil. 716 (1954); cited in *I Martin*, Rules of Court, p. 376.

[9] *Jacqueline Ind. vs. National Labor Relations*, 69 SCRA 243 (1976).

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